

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC STEVEN EMMERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48072

FILED

JAN 08 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribando*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of home invasion. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Marc Steven Emmerson to serve a prison term of 24-72 months and ordered him to pay \$1,500.00 in restitution.

Emmerson's sole contention is that the district court abused its discretion at sentencing. Specifically, Emmerson claims that "the best protection society could get is a permanent positive resolution" of his methamphetamine addiction, and that placement in a "strict, long-term, in-patient treatment facility" designed to address his addiction would be more appropriate than a term of incarceration. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Emmerson argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Emmerson's contention is without merit.

¹113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

²107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ The district court's discretion, however, is not limitless.⁵ Nevertheless, we will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."⁶ Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁷

In the instant case, Emmerson does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

³Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁴Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

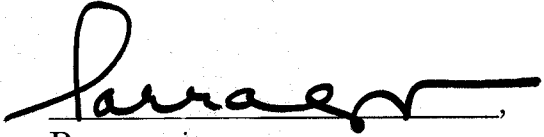
⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

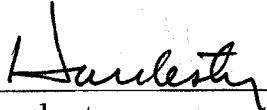
⁷Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).


statute.⁸ Moreover, at the sentencing hearing, the district court discussed the nature of the offense, noting that the 65-year-old victim was “terrorize[d]” when, while in the shower, Emmerson forcibly kicked down her front door and entered the house screaming at her. The district court stated that a term of incarceration was more appropriate than a suspended sentence. Finally, the granting of probation is discretionary.⁹ Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Emmerson’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

⁸See NRS 205.067(2) (category B felony punishable by a prison term of 1-10 years).

⁹See NRS 176A.100(1)(c).

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk