IN THE SUPREME COURT OF THE STATE OF NEVADA

EKENE TONY PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48084

FILED

JAN 09 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of coercion (count I), hindering a victim from reporting a crime (count II), and gross misdemeanor false imprisonment (count III). Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Ekene Tony Porter to serve a prison term of 19 to 72 months for count I, a consecutive prison term of 19 to 72 months for count II, and a concurrent jail term of 12 months for count III.

Porter's sole contention on appeal is that the district court abused its discretion at sentencing by refusing to grant probation. Specifically, Porter claims that he should have received a maximum suspended sentence with the condition that he complete a long term, in-patient treatment program for his methamphetamine addiction. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Porter contends that this court should review the sentence imposed by the

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

district court to determine whether justice was done. We conclude that Porter's contention lacks merit.

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] 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."[5] Moreover, regardless of its severity, a sentence that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[6]

In the instant case, Porter does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Moreover, we note that the

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

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

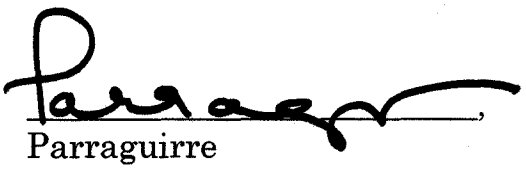
[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

[6]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

sentence imposed by the district court was within the parameters provided by the relevant statutes,[7] and that the granting of probation is discretionary.[8] The record indicates that Porter has an extensive criminal history, including thirteen misdemeanor convictions and one felony conviction. Prior to imposing sentence, the district court considered arguments from counsel, the presentence investigation report, and Porter's statement of allocution. In refusing to grant probation, the district court noted the vicious and brutal nature of the crime and concluded that Porter was a danger to himself and the community. Accordingly, the district court did not abuse its discretion at sentencing.

Having considered Porter's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
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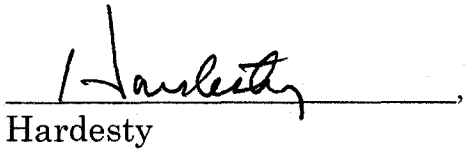

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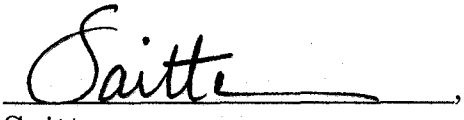

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[7]See NRS 207.190(2)(a); NRS 199.305(1); NRS 193.130(2)(d); NRS 200.460(2); NRS 193.140.

[8]See NRS 176A.100(1)(c).

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