

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIK TOUBEAUX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48241

FILED

JAN 24 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of child abuse or neglect causing substantial bodily harm. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Erik Toubeaux to serve a prison term of 96 to 240 months.

Toubeaux contends that the district court abused its discretion by imposing an excessive sentence. Specifically, Toubeaux contends that the maximum sentence was not warranted given that he had only one twelve-year-old felony conviction, he had no prior history of violence, he was certified as not representing a high risk to re-offend, and he was remorseful. Additionally, Toubeaux argues that the injuries to his daughter were not inflicted by him, noting that he worked full-time on graveyard shift and slept during the day, and that his wife and co-defendant, an admitted methamphetamine addict, was the primary

caregiver of their daughter.¹ Citing to the dissents in Tanksley v. State² and Sims v. State³ for support, Toubeaux contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Toubeaux's contention is without 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.⁴ This court has consistently afforded the district court wide discretion in its sentencing decision.⁵ 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 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

¹At the sentencing hearing, Toubeaux and his wife both denied inflicting the actual injuries to their daughter, each claiming that they were guilty of neglecting her by failing to protect her.

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

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

⁴Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁵Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); see also Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

unreasonably disproportionate to the offense as to shock the conscience."⁷

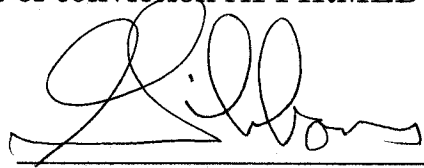
In the instant case, Toubeaux does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Moreover, we note that the sentence imposed by the district court was within the parameters provided by the relevant statute.⁸ At sentencing, the court and the prosecutor noted that the victim, Toubeaux's twelve-week-old daughter, suffered multiple injuries, including a broken humerus and clavicle, three broken ribs, two broken ankles, a skull fracture, and subdural hematomas and retinal bleeding in both eyes. The prosecutor commented that medical experts believed some of the injuries were caused by shaking her and others were caused by holding her by the legs while beating her onto a surface. The prosecutor also stated that medical experts believed that, as a result of her injuries, the victim might suffer permanent vision and brain damage. Prior to imposing sentence, the district court considered arguments from counsel, the presentence investigation report, and Toubeaux's statement of allocution. In imposing the maximum sentence, the district court commented on the injuries to the victim. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

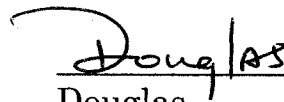
⁷Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

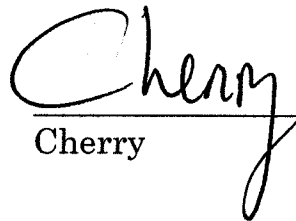
⁸See NRS 200.508(1)(a)(2) (providing for a prison terms of 2 to 20 years).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

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