

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEROY PAYNE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48287

FILED

JAN 24 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance with intent to sell. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Michael Leroy Payne to serve a prison term of 16 to 48 months.

Payne contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is disproportionate to the crime. Specifically, Payne argues that the sentence is too harsh given the fact that the sentence exceeded the recommendation of the Division of Parole and Probation, his criminal history included no prior drug related convictions and no felony convictions since 1997, and the charged offense was non-violent. We conclude that Payne's contention lacks merit.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.¹ Regardless of its severity, a

¹Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

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."²

This court has consistently afforded the district court wide discretion in its sentencing decision.³ This court 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."⁴

In the instant case, Payne does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁵ Finally, we disagree that the sentence is so disproportionate to the offense as to shock the conscience. The charged offense involved the possession of over six grams of cocaine with intent to sell. And at sentencing the prosecutor noted that Payne had four felony convictions in the last ten years and had

²Blume 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).

³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

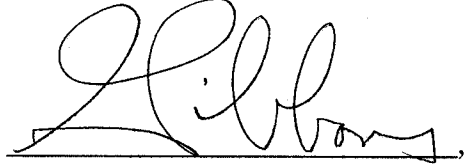
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

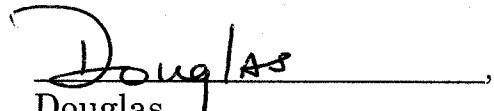
⁵See NRS 453.337(2)(a); NRS 193.130(2)(d) (providing for a prison term of 1 to 4 years).

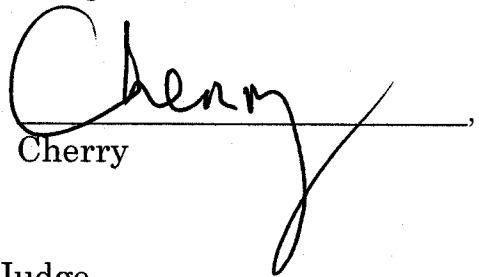
numerous grants of probation and parole revoked. Accordingly, the sentence imposed does not constitute cruel and unusual punishment.

Having considered Payne's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk