IN THE SUPREME COURT OF THE STATE OF NEVADA

FLORENCIO CARLOS URIBE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48448

FILED

APR 06 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of child abuse or neglect resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Florencio Uribe to a prison term of 96 to 240 months.

Uribe first contends that the State should have been precluded from trying him for murder because his co-defendant was acquitted of murder charges. This court has held, however, that acquittal of a co-defendant does not preclude trial of a defendant.[1] Moreover, the prosecutor's comments in the instant case, that his office intended to drop the charges against Uribe if Uribe's co-defendant was acquitted, do not amount to "judicial estoppel" because the prosecutor's comments were not made under oath.[2]

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[1]See Larsen v. State, 93 Nev. 397, 400, 566 P.2d 413, 414 (1977); see also Hanley v. State, 85 Nev. 154, 159-60, 451 P.2d 852, 856 (1969) (holding that an aider and abettor may be convicted even if the principal actor has not been convicted).

[2]See Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549-50, 396 P.2d 850, 854 (1964).

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Finally, because Uribe was not actually convicted of the murder charges, we conclude that even if the State had been precluded from trying Uribe for murder, any error was harmless beyond a reasonable doubt. Uribe's argument that the conviction "was likely a compromise based on ambiguity and misinterpretation" is speculative at best. Based on the foregoing, we conclude that Uribe's contention is without merit.

Uribe also contends that the district court abused its discretion at sentencing. We conclude that Uribe contention is without merit.

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] 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.'"[5]

In the instant case, Uribe does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant

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

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

[5]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).

statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[6]

Having considered Uribe's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.

Hardesty, J.

Douglas, J.

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk

[6]See NRS 200.508(1)(a)(2).