IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER LEE LAMADRID, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48473
CHRISTOPHER LEE LAMADRID, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48700
CHRISTOPHER LEE LAMADRID, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48740

FILED

JUN 12 2007

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

ORDER OF AFFIRMANCE

These are consolidated appeals from a judgment and amended judgment of conviction and a district court order denying appellant's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Christopher Lee LaMadrid was convicted, pursuant to an Alford plea,[1] of one count each of second-degree kidnapping and attempted mayhem. LaMadrid was initially charged, for conduct directed towards his ex-wife, with one count each of invasion of the home while in

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

07-12864

the possession of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, sexual assault with the use of a deadly weapon, and attempted mayhem with the use of a deadly weapon. The district court sentenced LaMadrid to serve concurrent prison terms of 36-180 months and 24-60 months. Thereafter, LaMadrid filed a motion to withdraw his plea. The State opposed the motion. The district court heard arguments from counsel, and on December 14, 2006, entered an order denying LaMadrid's motion.

First, LaMadrid contends that the district court erred by denying his motion to withdraw his guilty plea. Specifically, LaMadrid claims that his plea was not entered knowingly and intelligently because he was never advised by the court that it would consider at sentencing "speculative ex parte letters and written reports prepared by the Clark County Detention Center house arrest program." We disagree.

A guilty plea is presumptively valid, and the defendant has the burden of establishing that the plea was not entered knowingly and intelligently.[2] To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.[3] "Following sentencing, a guilty plea may be set aside only to correct a

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[2]See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[3]See State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); see also Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1061-62 (1993) (The district court "has a duty to review the entire record to determine whether the plea was valid. . . . [And] may not simply review the plea canvass in a vacuum.").

manifest injustice."[4] This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[5]

We conclude that the district court did not abuse its discretion in denying LaMadrid's motion. At the hearing on the motion, the district court stated that it found no basis to allow LaMadrid to withdraw his plea. We agree and note that LaMadrid has never challenged the sufficiency of the plea canvass. Moreover, LaMadrid does not allege that he did not understand the charges against him or was coerced into pleading guilty pursuant to Alford. And finally, there is no indication in the record that the subject of house arrest was part of the negotiated plea bargain, and therefore, was relevant to the voluntariness of his LaMadrid's plea. Accordingly, we conclude that there was no manifest injustice and that LaMadrid's contention is without merit.

Second, LaMadrid contends that the district court abused its discretion at sentencing. Specifically, LaMadrid argues that the district court considered "highly improper, suspect, and impalpable evidence" contained in a report provided to the court by an officer with the house arrest program, and as a result, imposed a term of incarceration rather than probation. We disagree.

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[4]Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990); see also NRS 176.165.

[5]See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

This court has consistently afforded the district court wide discretion in its sentencing decision.[6] The district court's discretion, however, is not limitless.[7] 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."[8] Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[9]

In the instant case, LaMadrid failed to demonstrate that the district court relied solely on impalpable or highly suspect evidence or allege that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[10] Although the Division of Parole and Probation recommended probation for LaMadrid, it did so "reluctantly"

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

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

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

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

[10]See NRS 200.330 (category B felony punishable by a prison term of 2-15 years); NRS 200.280; NRS 193.330(1)(a)(3); NRS 193.130(2)(c) (attempt to commit a category B felony punishable by a prison term of 1-5 years).

based on "the issue of the defendant's inability to contribute to the financial support of his children." The presentence investigation report prepared by the Division actually prefaced the recommendation by stating that it was "inclined to recommend a term of incarceration." At the sentencing hearing, the district court heard impact statements from the victim's sister, and the victim, who detailed how traumatically LaMadrid's violent crime impacted her and their children, and how fearful she was about the possibility of LaMadrid's release on probation. Prior to imposing the sentence, the district court stated:

> When I considered giving you house arrest I was very quickly informed by House Arrest that you were unsupervisable because of your behavior that they had seen in the jail; and if they say you're unsupervisable under a house arrest scenario, there is no way I believe you are supervisable under a probation situation. So no, you are not getting probation today. You are not, and I'm going to make sure there's a sufficient amount of time at the end of your sentence so that when you do get out on parole there will be somebody watching you for a very long time. . . . So I understand your concern, ladies. I certainly hope that you find yourself in a way to be protected and that nothing else happens to harm you.

Finally, we note that the granting of probation is discretionary.[11] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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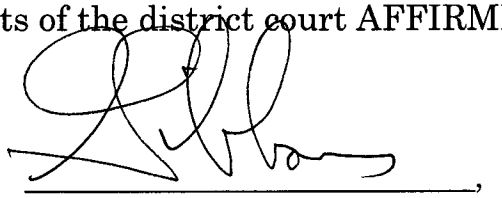
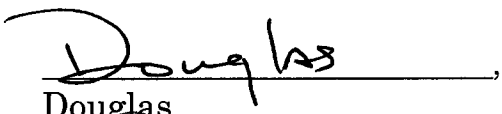
[11]See NRS 176A.100(1)(c).

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

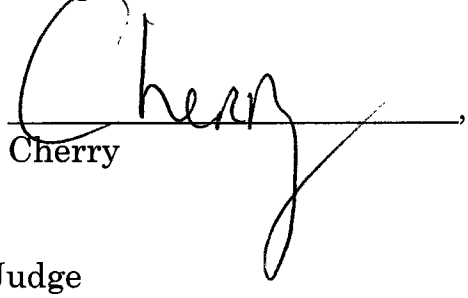
ORDER the judgments of the district court AFFIRMED.



_____, 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