IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY SPANGLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48484

FILED

FEB 20 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of robbery and home invasion. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Gary Spangler to serve two consecutive prison terms of 72-180 months and 48-120 months.

First, Spangler contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt on both counts. Specifically, Spangler claims that he never formed the intent to forcibly enter the apartment of the victim and no witnesses testified that he took any of the victim's property. Spangler points out that his accomplice, Anthony Turner, testified on his behalf at trial and stated that Spangler was not involved in the crime.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

trier of fact.[1] In particular, we note that the victim testified that at approximately 1:00 a.m. on the night in question, the "locked and dead bolted" metal fire door to his apartment came "crashing in," causing significant damage to the door frame. Spangler was the first person to enter the apartment, followed by Turner, and they both "jumped on top" of the victim and started beating him. Spangler continued beating the victim as Turner filled a bag with the victim's property. When the police arrived at the scene, they found Spangler and Turner walking through the parking lot; Spangler was carrying the bag containing the victim's property. Items recovered after Spangler and Turner were taken into custody included a camera, laptop computer, knife and pliers, Walkman, and bottles of the victim's prescription pills.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Spangler committed the crimes beyond a reasonable doubt.[2] It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.[3] Moreover, we note that circumstantial evidence

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[1]See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[2]See NRS 200.380(1); NRS 205.067(1).

[3]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

alone may sustain a conviction.[4] Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Second, Spangler contends that the district court abused its discretion by imposing a harsh sentence based on impalpable and highly suspect evidence. Specifically, Spangler argues that the district court relied on alleged mistakes in the presentence investigation report in determining his sentence. At the sentencing hearing, Spangler informed the court that contrary to the information contained in the PSI, he was not convicted in Illinois in 1976 for unlawful restraint or in 1992 for sexual assault, or in California in 1995 for grand theft. Spangler also notes that the State did not present certified judgments of conviction confirming his criminal history at the sentencing hearing. We conclude that Spangler'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.[5] 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

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[4]See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

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

[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).

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, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[9]

We conclude that Spangler cannot demonstrate that the district court relied solely on impalpable or highly suspect evidence. Additionally, Spangler does not 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] Moreover, even without considering the prior convictions that he challenged at the sentencing hearing, Spangler's criminal history is extensive, spanning approximately twenty years, and including convictions for battery (multiple), burglary (multiple), rape, aggravated battery, larceny from the person, failure to register as an ex-felon, various traffic violations, and second-offense open and gross lewdness. We also note that it is within the district court's discretion to impose consecutive

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

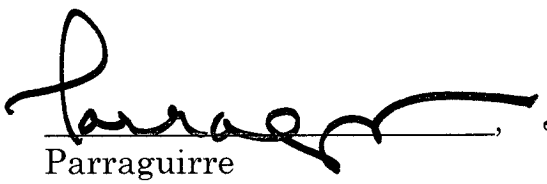
[9]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[10]See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years); NRS 205.067(2) (category B felony punishable by a prison term of 1-10 years).

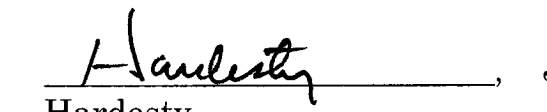
sentences.[11] Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



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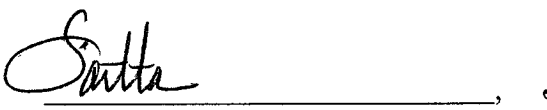

_____, J.
Saitta

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

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[11]See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).