IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ALLAN PANKO A/K/A JON DAVID MILLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48551

FILED

JAN 09 2008

TRACIE K. LINDEMAN
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 of malicious prosecution. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant David Allan Panko a habitual criminal and sentenced Panko to a prison term of life with parole eligibility in 10 years.

Panko first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Panko contends that the evidence at trial failed to demonstrate that he "maliciously caused or attempted to cause [the victim] to be arrested or proceeded against for child molestation." Specifically, Panko argues that he was mentally unstable and unable to form the requisite malicious intent.

Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1] In particular, we note that evidence was presented that Panko sent an anonymous letter to a district court judge claiming that the judge's daughter was being molested. In a follow-up telephone

[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

conversation with the judge's secretary, Panko stated that the judge's daughter was being molested by her father. Panko later admitted to writing the letter. The father was questioned by the police, but there was no evidence of molestation.

The jury could reasonably infer from the evidence presented that Panko "maliciously and without probable cause therfor, cause[d] or attempt[ed] to cause another to be arrested or proceeded against" for child molestation.[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, substantial evidence supports the verdict.[3]

Panko next contends that the district court abused its discretion and that his sentence constitutes cruel and unusual punishment. Specifically, Panko contends that the sentence imposed was excessive because he was delusional and was merely attempting to protect a child he believed was in danger.

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] 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."[5] Moreover, regardless of its severity, "[a] sentence

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[2]NRS 199.310.

[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).

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

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

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.'"[6]

In the instant case, Panko 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.[7] Therefore, we conclude that Panko's sentence was not cruel or unusual and the district court did not abuse its discretion.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

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[6]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).

[7]See NRS 199.310(1); NRS 207.010(1)(b)(2).

cc: Hon. Stewart L. Bell, 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