

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN NICHOLAS MASELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

JOHN NICHOLAS MASELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48621

FILED

APR 17 2007

No. 48622

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

ORDER OF AFFIRMANCE

These are consolidated appeals from two separate judgments of conviction. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Pursuant to plea agreements in two different cases, the district court convicted appellant John Nicholas Maselli of one count of burglary and one count of obtaining property by false pretenses. The district court sentenced Maselli to serve a prison term of 48 to 120 months for burglary and a consecutive prison term of 28 to 72 months for obtaining property by false pretenses.

Maselli contends that the district court abused its discretion at sentencing. Maselli suggests that the district court abdicated its sentencing discretion by following the Division of Parole and Probation's sentencing recommendation. Maselli notes that the district court did not provide any indication that it considered the nature and circumstances of

his offenses or information regarding his life and characteristics before rendering its sentencing decision.<sup>1</sup> And Maselli argues that he should be resentenced by a different district judge and the district judge should be instructed to make factual findings supporting his or her sentencing decision.

We have consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> 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."<sup>3</sup> Moreover, 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 as to shock the conscience.<sup>4</sup>

In the instant case, Maselli does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. We note that the sentence imposed is

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<sup>1</sup>Maselli cites to Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

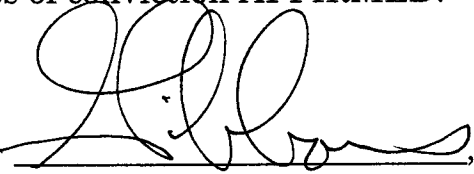
<sup>2</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

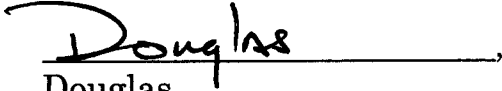
<sup>3</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

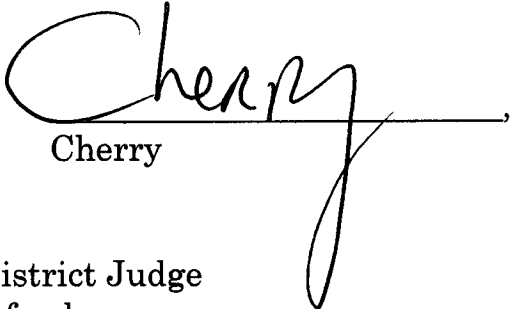
<sup>4</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

within the parameters provided by the relevant statutes,<sup>5</sup> and that the district court has discretion to impose consecutive sentences.<sup>6</sup> We conclude that Maselli's contention is without merit, and we

ORDER the judgments of conviction AFFIRMED.

  
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Gibbons J.

  
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Douglas J.

  
\_\_\_\_\_  
Cherry J.

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>5</sup>See NRS 205.060(2) (burglary is punishable by a prison term of 1 to 10 years); NRS 205.380(1)(a) (obtaining property by false pretenses is punishable by a prison term of 1 to 6 years, if the value of the thing fraudulently obtained was \$250 or more).

<sup>6</sup>See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).