

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CURTIS GIBBONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48743

FILED

JUN 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of identity theft of an older and/or vulnerable person. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant Robert Gibbons to a prison term of 80 to 200 months.

Gibbons contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is disproportionate to the crime.¹ In particular, Gibbons contends that the sentence imposed is too harsh given that the charged offense was non-violent, that he had not engaged in deceit or fraud to obtain personal information about the victim, and that the charges on the credit card were not extremely high, totaling only \$828.35. We conclude that Gibbons' contention lacks merit.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is

¹Gibbons primarily relies on Schmidt v. State, 94 Nev. 665, 584 P.2d 695 (1978).

grossly disproportionate to the crime.² 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."³

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

In the instant case, Gibbons does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁶ Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. In imposing

²Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

³Blume 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).

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

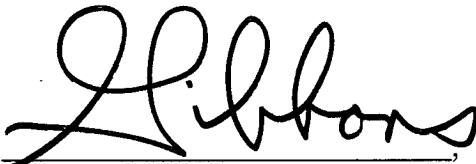
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

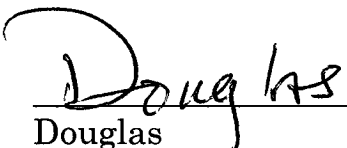
⁶See NRS 205.463(3) (providing for a prison sentence of 3 to 20 years).


sentence, the district court commented that it read with interest the statement from the victim, Gibbons' father, which stated: "My son Robert has caused extreme troubles for me. He took my money and all types of home items. I have no respect for Robert and never wish to see him again in this life. My life has been turned upside down." The district court specifically commented on the fact that Gibbons' father was ill. Gibbons avoided a harsher sentence and the possibility of adjudication as a habitual criminal by pleading guilty. Furthermore, the district court chose not to sentence Gibbons to the maximum prison term as recommended by the State. Accordingly, we conclude that the district court did not abuse its discretion at sentencing and that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Gibbons' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Andrew J. Puccinelli, District Judge
Brian D. Green
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk