IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON MARK ESPINOSA A/K/A JAY ESPINOSA A/K/A JASON MARK ESPANOSA A/K/A J. ESPINOSA A/K/A JASON ESPINOSA A/K/A JASON ESPANOSA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48745

FILED

APR 17 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Jason Mark Espinosa to serve a prison term of 40-120 months and ordered him to pay $1,335.00 in restitution.

Espinosa's sole contention on appeal is that the district court abused its discretion at sentencing. Specifically, Espinosa claims that the district court "simply ignored" the recommendation of the Division of Parole and Probation by not granting him probation. We disagree.

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.[1] This court has consistently afforded the district court wide

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

discretion in its sentencing decision.[2] The district court's discretion, however, is not limitless.[3] 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."[4] 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.[5]

In the instant case, Espinosa does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute.[6] At the sentencing hearing, the State opposed probation based on Espinosa's criminal history. Additionally, in imposing the sentence, the district court stated, "Mr. Espinosa, I just don't see probation in your future based on my reading [of] your Pre-Sentence Report." And finally, we note that the granting of probation is discretionary.[7] Therefore, based

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

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

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

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

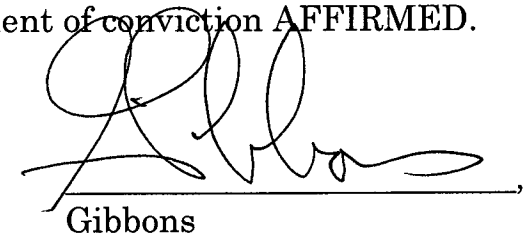
[6]See NRS 205.060(2) (category B felony punishable by a prison term of 1-10 years and a fine not to exceed $10,000.00).

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

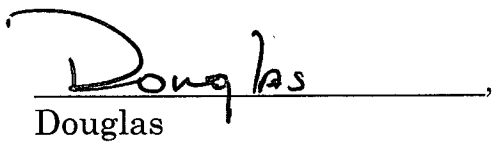
on all of the above, we conclude that the district court did not abuse its discretion at sentencing by imposing a term of incarceration.

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

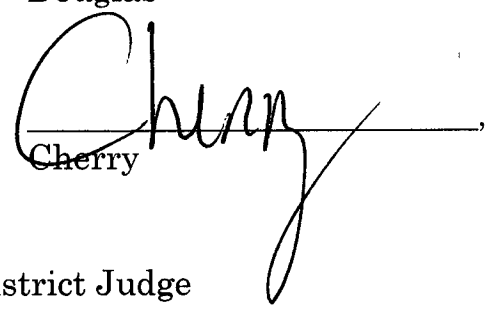
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. J. Michael Memeo, District Judge
Lockie & Macfarlan, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk