IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN BALBOA CRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48756

FILED

JUN 27 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 guilty plea, of one count of possession of a credit card and/or debit card without consent. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Martin Balboa Cruz to serve a prison term of 12-34 months and ordered him to pay $3,050.00 in restitution.

Cruz's sole contention is that the district court abused its discretion at sentencing. Specifically, Cruz claims that "the best protection society could get is a permanent positive resolution" of his drug addiction, and that placement in a "strict, long-term, in-patient treatment facility" designed to address his addiction would be more appropriate than a term of incarceration. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Cruz argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Cruz's contention is without merit.

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

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.[3] This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] 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."[6] 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.[7]

In the instant case, Cruz does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

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

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

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

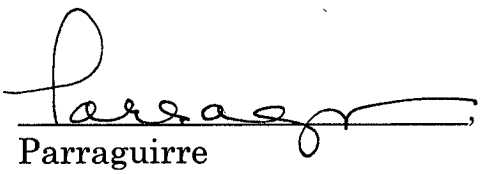
[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

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

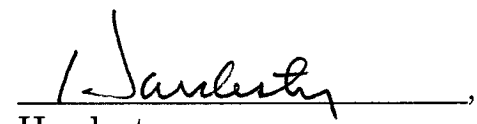
statutes.[8] Additionally, we note that Cruz has an extensive criminal history, characterized by the State as "habitual-criminal-like." Because of his criminal history, the district court expressly refused to grant Cruz a term of probation.[9] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



_____, J.
Hardesty

_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, 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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[8]See NRS 205.690(2); NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years).

[9]See NRS 176A.100(1)(c) (the granting of probation is discretionary).