

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZACKERY ALLEN CRABTREE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48827

FILED

AUG 21 2007

BY  JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14 years. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Zackery Allen Crabtree to serve a prison term of 60 to 150 months.

Crabtree contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because it is disproportionate to the crime. Further, Crabtree contends that the sentence is excessive because his criminal history did not include sex offenses and his psychosexual evaluation indicated that he was a low risk to reoffend. We conclude that Crabtree's contentions lack merit.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.¹ Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual

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

punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."²

This court has consistently afforded the district court wide discretion in its sentencing decision.³ 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."⁴

In the instant case, Crabtree 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.⁵ In imposing sentence, the district court commented that Crabtree had three prior felony convictions, and that the instant offense involved a nine-year-

²Blume 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).

³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


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


⁵See NRS 201.230(2); NRS 193.330(1)(a)(1) (an attempt to commit a category A felony is a category B felony, punishable by a prison term of 2 to 20 years).

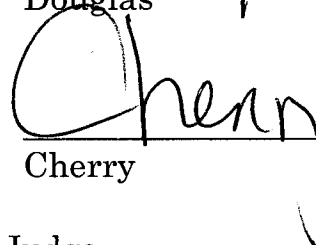
old victim.⁶ Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.⁷


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jackie Glass, District Judge
Kirk T. Kennedy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk
Zackery Allen Crabtree

⁶Crabtree was originally charged with 6 counts of sexual assault on a minor under 14 years of age and 4 counts of lewdness with a child under the age of 14.

⁷Because Crabtree is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person document Crabtree has submitted to this court in this matter.