

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ADOLF MARTINEZ A/K/A
DAVID MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48915

FILED

MAY 29 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of attempting to obtain and use the personal identification information of another person. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant David Adolf Martinez to serve a prison term of 12 to 32 months.

Martinez contends that his sentence constitutes cruel and unusual punishment because it is unconstitutionally excessive. We disagree.

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 punishment unless the statute fixing punishment is unconstitutional or

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

the sentence is so unreasonably disproportionate to the offense as to shock the conscience."²

We have consistently afforded the district court wide discretion in its sentencing decision.³ 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

Martinez does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional, and our review of the record reveals that the district court imposed a sentence that fell within the parameters provided by the relevant statutes.⁵

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).

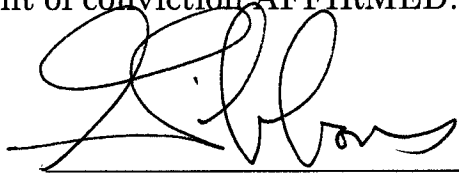
³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

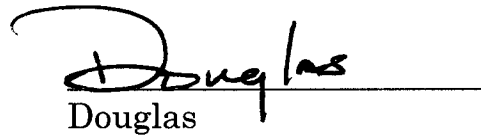
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

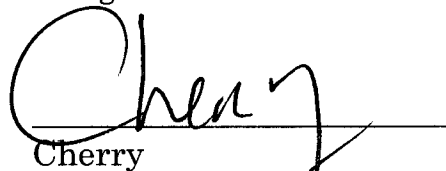
⁵See NRS 193.130 (a category D felony is punishable by a prison term of 1 to 4 years); NRS 193.330 (an attempt to commit a category C felony is punished as either a category D felony or as a gross misdemeanor); NRS 205.463(2) (a person who obtains and uses the personal identification information of another person to avoid or delay being prosecuted for an unlawful act is guilty of a category C felony).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk