

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA WOLFCALE A/K/A JOSH
WOLFCALE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48927

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, pursuant to a guilty plea, of one count of burglary. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court adjudicated appellant Joshua Wolfcale as a habitual criminal and sentenced him to serve a prison term of 96-240 months and ordered him to pay \$9,706.00 in restitution.

Wolfcale's sole contention on appeal is that the district court abused its discretion at sentencing. Specifically, Wolfcale claims that he failed to appear for his initial sentencing hearing due to "poor judgment" and "mental health deficiencies," and the severity of his sentence amounts to cruel and unusual punishment. 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

¹Harmelin 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, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁵

Wolfcale 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 Additionally, the written plea agreement, signed by Wolfcale, reflects the parties' stipulation that in the event that Wolfcale failed to appear for his initial sentencing hearing, he would receive the actual sentence imposed. A review of the entry of plea hearing reveals that Wolfcale fully understood the sentencing stipulation. As noted above, Wolfcale, however, failed to appear for his sentencing hearing. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

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


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

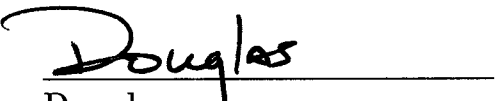
⁵Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

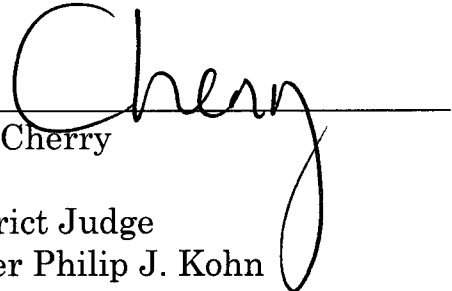
⁶See NRS 207.010(1)(a).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jennifer Togliatti, 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