

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN ANDREW ALLISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48972

FILED

AUG 02 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of one count of felony driving under the influence causing death or substantial bodily harm. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Bryan Allison to serve a prison term of 96 to 240 months.

Allison contends that he received a maximum prison sentence for his offense as a result of judicial bias. Specifically, citing to Cameron v. State,¹ Allison claims that the district court demonstrated "personal feelings of animosity and bias towards the Defendant" when it commented that "this [was] another methamphetamine involved death of a child." Allison contends that the district court was emotionally affected by a previous case in which a methamphetamine user was sentenced for the murder of her step-child. We conclude that Allison's claim lacks merit.

The "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the

¹114 Nev. 1281, 968 P.2d 1169 (1998).

presentation of all the evidence."² Moreover, 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 Moreover, 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 as to shock the conscience.⁵

In the instant case, Allison does not allege that the relevant statute is unconstitutional and we conclude that the district court did not rely solely on impalpable or highly suspect evidence. The district judge's comments did not show that he had closed his mind to the evidence and were therefore not indicative of animosity or improper bias. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁶ In imposing sentence, the district court merely noted that Allison admitted that he was under the influence of methamphetamine while driving a vehicle which resulted in the death of a child. We conclude that the district court did not abuse its discretion at

²Id. at 1283, 968 P.2d at 1171.

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

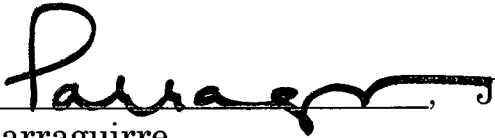
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (emphasis added).

⁵Blume 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)).


⁶See NRS 484.3795(1), (4).

sentencing. Accordingly, we conclude that Allison's contention is without merit, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk