

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANE GUY DAUGHERTY, A/K/A
SHANE DAUGHERTY, A/K/A SITO
ORTIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49064

FILED

MAY 31 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. The district court sentenced appellant Shane Guy Daugherty to serve a prison term of 72 to 180 months.

Daugherty contends that the district court abused its discretion by imposing an excessive sentence. Daugherty argues that the maximum sentence imposed was too harsh given that he had made positive changes in his life and had arranged to attend a long-term drug treatment program. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Daugherty contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Daugherty's contention is without merit.

¹113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

²107 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 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."⁵ Moreover, 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 the sentence is so unreasonably disproportionate to the offense as to shock the conscience."⁶

In the instant case, Daugherty does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Moreover, we note that the sentence imposed by the district court was within the parameters provided

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

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

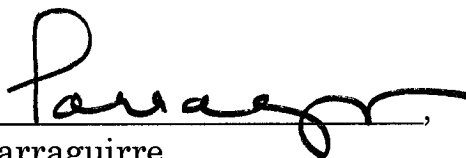
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); see also Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

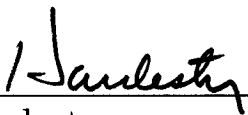
⁶Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).


by the relevant statute,⁷ and the granting of probation is discretionary.⁸ In imposing the maximum sentence, the district court considered Daugherty's significant criminal history and the circumstances of the charged crime. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Daugherty's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Patrick Flanagan, District Judge
Michael V. Roth
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷See NRS 200.380(2) (providing for a prison terms of 2 to 15 years).

⁸See NRS 176A.100(1)(c).