IN THE SUPREME COURT OF THE STATE OF NEVADA

RONICIA BENJAMIN A/K/A RONICIA LA-TRESSA BENJAMIN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 49191
RONICIA BENJAMIN A/K/A RONICIA LA-TRESSA BENJAMIN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 49192

FILED

AUG 21 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from judgments of conviction, pursuant to guilty pleas, of three counts of obtaining and/or using the personal identification information of another. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Ronicia Benjamin to serve three consecutive prison terms of 96-240 months and ordered her to pay $28,413.10 in restitution. We elect to consolidate these appeals for disposition.[1]

First, Benjamin contends that the district court erred by denying her presentence motion to withdraw her guilty pleas. Specifically, Benjamin claims that she did not enter her pleas voluntarily because, at the plea canvass, she was under the influence of methamphetamine,

[1]See NRAP 3(b).

07-18417

ingested the night before, while in custody at the Washoe County Jail. Benjamin concedes that "the record of the canvass has some factors in favor of finding that she did understand what was happening," but that "it also has some factors in favor of finding that she did not understand what was happening." (Emphasis added.) We disagree.

"A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason' if it is 'fair and just.'"[2] In deciding whether a defendant has advanced a substantial, fair, and just reason to withdraw a guilty plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.[3] The district court "has a duty to review the entire record to determine whether the plea was valid. . . . [and] may not simply review the plea canvass in a vacuum."[4] A defendant has no right, however, to withdraw her plea merely because she moves to do so prior to sentencing or because the State failed to establish actual prejudice.[5] Nevertheless, a more

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[2]Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

[3]See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

[4]Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

[5]See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

lenient standard applies to motions filed prior to sentencing than to motions filed after sentencing.[6]

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.[7] "On appeal from the district court's determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."[8] If the motion to withdraw is based on a claim that the guilty plea was not entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.[9]

We conclude that Benjamin has failed to substantiate her claim that her guilty pleas were not entered knowingly and voluntarily. In her motion and at the hearing on the motion, Benjamin never addressed what she specifically failed to understand at the plea canvass due to her alleged intake of methamphetamine. Moreover, our review of the plea canvass reveals that Benjamin appropriately answered the questions posed to her by the court, and that any fleeting confusion was attributable to the form of the district court's questions, rather than to any

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[6]See Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004).

[7]NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984)).

[8]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[9]See id.

actual misunderstanding. Additionally, Benjamin coherently and accurately defined "restitution" when asked to do so by the court, and specifically addressed the court and made a cogent argument in favor of her request for a bail reduction. Therefore, we conclude that the district court did not abuse its discretion in denying Benjamin's presentence motion to withdraw her guilty pleas.

Second, Benjamin contends that the district court abused its discretion by imposing an excessive sentence that is disproportionate to the crimes. Specifically, Benjamin claims that "[t]he best protection society could get is a permanent positive resolution" of her mental illness and drug addiction, and that placement in a "strict, long-term, in-patient treatment facility" designed to address her problems would be more appropriate than a term of incarceration. Citing to the dissents in Tanksley v. State[10] and Sims v. State[11] and the concurrence in Santana v. State[12] for support, Benjamin argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Benjamin's contention is without merit.

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

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[10]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[11]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

[12]122 Nev. ___, ___, 148 P.3d 741, 745 (2006) (Rose, C.J., concurring).

crime.[13] This court has consistently afforded the district court wide discretion in its sentencing decision.[14] The district court's discretion, however, is not limitless.[15] 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."[16] Despite its severity, 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 to the crime as to shock the conscience.[17]

In the instant case, Benjamin does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[18] We also note that it is within the district court's discretion to

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

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

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

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

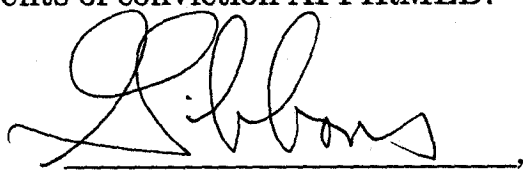
[17]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[18]See NRS 205.463(1) (category B felony punishable by a prison term of 1-20 years); NRS 205.463(4).

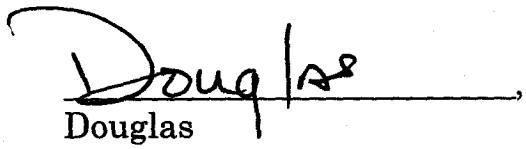
impose consecutive sentences.[19] And finally, Benjamin has an extensive criminal history, including 16 felony convictions, 8 misdemeanor convictions, several revoked terms of probation and parole, and numerous additional arrests. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

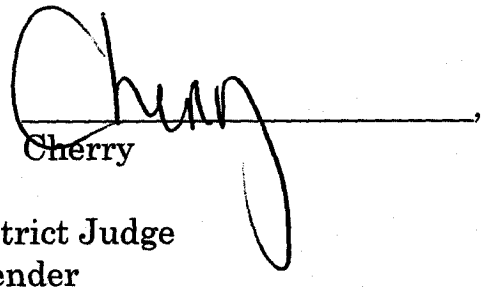
ORDER the judgments of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[19]See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).