IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST DEAN CARPENTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49319

FILED

FEB 13 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. The district court adjudicated appellant a habitual criminal and sentenced him to serve life in prison without the possibility of parole.

Appellant contends that the district court abused its discretion by imposing an excessive sentence. Citing to the dissent in Tanksley v. State[1] for support, appellant argues that this court should review the sentence imposed by the district court to determine whether justice was done. Appellant argues that his sentence was excessive given that his six prior felony convictions were primarily non-violent property offenses and occurred over a span of thirty years.[2] We disagree with appellant's contention.

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[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

[2]The convictions included: a January 22, 1976, conviction for one count of burglary and one count of possession of stolen property; a May 4, 1976, conviction for one count burglary; a July 1, 1980, conviction for three counts of burglary; a March 3, 1989, conviction for one count of burglary; a

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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.[3] 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.'"[4]

This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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."[6]

. . . continued

February 16, 1994, conviction for one count of attempted grand larceny; and an August 19, 1997 conviction for one count of ex-felon in possession of a firearm and possession of stolen property.

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

[4]Blume 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).

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

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

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes and the habitual criminal statute makes no special allowance for non-violent crimes.[7] Here, the district court based its sentence on the circumstances surrounding the burglary at issue in this case and appellant's long history of criminal conduct. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Appellant also argues the district court breached the plea agreement by refusing to consider a sentence of five to twenty years. We disagree. In his plea agreement, appellant acknowledged that the district court was not bound by any agreement of the parties and that the matter of sentencing was to be determined solely by the district court. Moreover, the plea agreement only indicated that the State was free to seek an habitual criminal adjudication pursuant to NRS 207.010. NRS 207.010(1)(a) provides for a term of five to twenty years if a person has been convicted of two previous felonies. NRS 207.010(1)(b) allows for the following sentences if a person has been convicted of three or more felonies: a definite term of twenty five years with parole eligibility after ten years served, life with the possibility of parole after ten years served, or life without the possibility of parole. Here, the district court found beyond a reasonable doubt that appellant had been convicted of six prior

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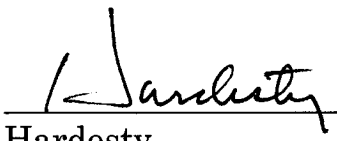
[7]See NRS 205.060(2); NRS 207.010(2).

felonies. Therefore, it was appropriate for the district court to consider the sentences provided for in NRS 207.010(1)(b).

Appellant finally argues that the district court believed that appellant would be released from prison within ten years if he were sentenced to life with the possibility of parole. This assertion is belied by the record. At the sentencing hearing, the district court did not indicate that appellant would be released within ten years. Rather, the district court noted the possibility that appellant could be paroled within ten years if sentenced to life in prison with the possibility of parole. Therefore, appellant's claim is not meritorious.

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

ORDER the judgment of the district court AFFIRMED.



_____, J.
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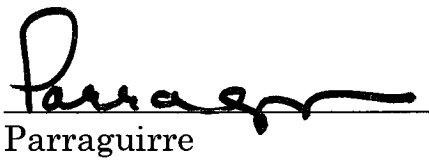
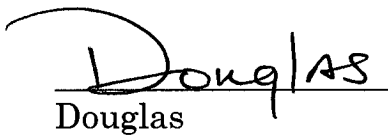


_____, J.
Parraguirre



_____, J.
Douglas

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