

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN AMESCUA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49717

**FILED**

NOV 16 2007

JANETTE M. GLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted burglary. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Steven Amescua to serve a prison term of 12-48 months.

Amescua contends that the district court abused its discretion by imposing a sentence constituting cruel and unusual punishment in violation of the United States Constitution.<sup>1</sup> Amescua claims that the sentence imposed was disproportionate to the crime and that “[h]e took responsibility for his crime and pled guilty.” 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.<sup>2</sup> This court has consistently afforded the district court wide

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<sup>1</sup>See U.S. Const. amend. VIII.

<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

07-24962

discretion in its sentencing decision.<sup>3</sup> The district court's discretion, however, is not limitless.<sup>4</sup> 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."<sup>5</sup> 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.<sup>6</sup>

Amescua 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.<sup>7</sup> Additionally, at the sentencing hearing, the district court noted Amescua's recent criminal history prior to imposing the sentence. And finally, although the State agreed not to oppose probation, the granting of probation is discretionary.<sup>8</sup> Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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<sup>3</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

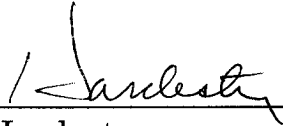
<sup>6</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

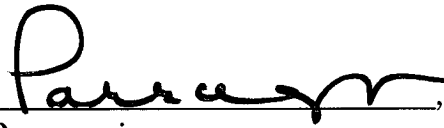
<sup>7</sup>See NRS 205.060(2); NRS 193.330(1)(a)(3); NRS 193.130(2)(c).

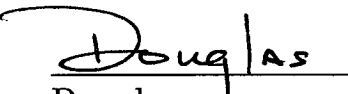
<sup>8</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED..

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Donald M. Mosley, 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