

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY LYNN BENNETT A/K/A TIM
BENETTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50019

FILED

JAN 04 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 each of obtaining money by false pretenses and grand larceny. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Timothy Lynn Bennett to serve two consecutive prison terms of 12 to 48 months. The district court also imposed restitution in the amount of \$36,242.75.

Bennett contends that the district court abused its discretion by imposing an excessive and grossly disproportionate sentence given that the convictions were based on one incident, Bennett's age, his lack of prior felony convictions, and the difficulty he would have finding employment and paying restitution after being released from prison. Further, Bennett contends that the district court abused its discretion by imposing consecutive sentences when the Division of Parole and Probation recommended probation.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ 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."² Moreover, regardless of its severity, "[a] sentence 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.'"³

In the instant case, Bennett 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.⁴ Finally, we note that the decision to grant probation⁵ and impose consecutive sentences is left to the sound discretion of the district court.⁶ Accordingly,

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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

³Blume 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).

⁴See NRS 205.222(3); NRS 205.380(1)(a).

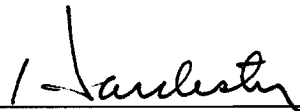
⁵See NRS 176A.100(1)(c).

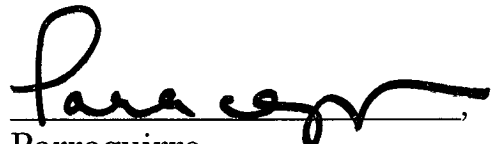
⁶See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

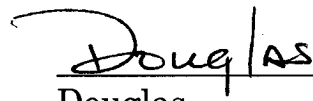
we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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