IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA BENEVENTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50132

FILED

DEC 06 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of conspiracy to commit grand larceny. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Joshua Beneventi to serve a jail term of 12 months "to run consecutively to any other sentence the Defendant is obligated to serve."

Beneventi's sole contention is that the district court abused its discretion by ordering the sentence to run consecutively to that imposed in another case. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Beneventi argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Beneventi'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

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

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

crime.[3] This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] 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."[6] 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.[7]

In the instant case, Beneventi 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.[8] We also note that it is within the district court's discretion to

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

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

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

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

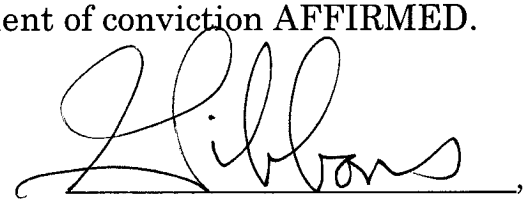
[7]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[8]See NRS 199.480(3); NRS 193.140.

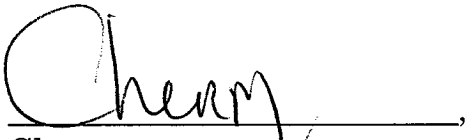
impose consecutive sentences.[9] Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

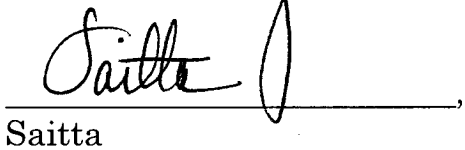
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Robert H. Perry, 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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[9]See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).