

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD WESLEY MCGUINNESS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50409

FILED

MAR 27 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, entered pursuant to an Alford plea,¹ of one count of sexually motivated coercion. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Richard Wesley McGuinness to serve a prison term of 28 to 72 months.

McGuinness contends that his sentence constitutes cruel and unusual punishment because it is disproportionate to the offense to which he pleaded: touching the genital area of his six-year-old niece.

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.² Regardless of its severity, a

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

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

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.”³

This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ 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.”⁵

In the instant case, McGuinness does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁶ Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

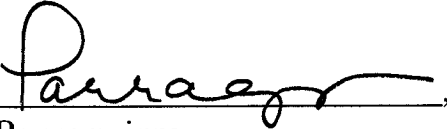
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁶See NRS 207.190(2)(a) (“where physical force or the immediate threat of physical force is used,” coercion is punishable by a prison term of 1 to 6 years).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Michelle Leavitt, 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