IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN T. NOWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50870

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Brian T. Nowell to serve a prison term of 24-60 months and ordered him to pay $5,276.97 in restitution.

First, Nowell contends that this court should reverse Martinez v. State, 115 Nev. 9, 974 P.2d 133 (1999), and "disallow restitution to victims who have already been reimbursed by an insurance company." Nowell claims that "[c]urrently, the victim of a crime can double recover by being reimbursed both by his insurance company and by the restitution paid by the defendant." Nowell argues that the restitution award should be vacated. We disagree.

Nowell did not object below to the imposition of restitution and is raising this challenge to Martinez for the first time on appeal. Therefore, Nowell has waived this issue and we need not address it. See Martinez, 115 Nev. at 12, 974 P.2d at 135; Williams v. State, 103 Nev.

227, 232, 737 P.2d 508, 511 (1987). Nevertheless, we note that Nowell has not provided persuasive authority in support of his argument and we decline to revisit Martinez. Accordingly, we reaffirm the part of the holding in Martinez that states, "[a] defendant's obligation to pay restitution to the victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds." Martinez, 115 Nev. at 12, 974 P.2d at 135.[1]

Second, Nowell contends that the district court abused its discretion at sentencing by imposing a term of incarceration rather than probation. Nowell claims that he needs drug treatment, "took full responsibility for his actions and did not even attempt to manipulate the system." Citing to the dissents in Tanksley v. State, 113 Nev. 844, 850-53, 944 P.2d 240, 244-45 (1997) (Rose, J., dissenting) and Sims v. State, 107 Nev. 438, 441-46, 814 P.2d 63, 65-68 (1991) (Rose, J., dissenting), and the concurrence in Santana v. State, 122 Nev. 1458, 1464-65, 148 P.3d 741, 745-46 (2006) (Rose, C.J., concurring), for support, Nowell argues that this court should review the sentence imposed by the district court to determine whether justice was done. Generally, Nowell claims that this court should review sentences for an abuse of discretion rather than cruel and unusual punishment. We disagree with Nowell's contention.

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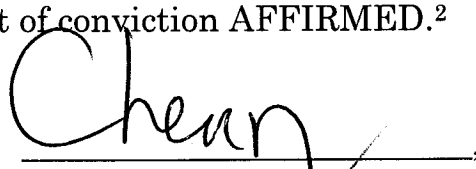
[1]In Martinez, this court also noted that "[t]his ruling does not prevent an insurance company that reimbursed a crime victim from seeking subrogation from a criminal defendant, if a statutory or common law right of subrogation exists." 115 Nev. at 12, 974 P.2d at 135.

This court has consistently afforded the district court wide discretion in its sentencing decision. Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court's discretion, however, is not limitless. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). 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." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). 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. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

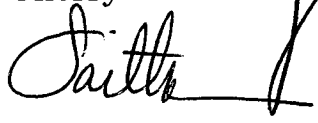
In the instant case, Nowell does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes. See NRS 205.273(3); NRS 193.130(2)(c) (category C felony punishable by a prison term of 1-5 years). At the sentencing hearing, one of the victims provided an impact statement and the district court noted how significantly the offense affected the elderly victim. Additionally, the district court referred to Nowell's extensive criminal history, which included six prior felony convictions, prior to imposing the sentence. Finally, it is within the district court's discretion to impose probation. See NRS 176A.100(1)(c). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.[2]



_____, J.
Cherry



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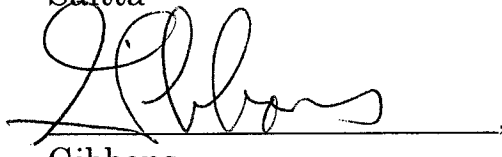

_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Ciciliano & Associates, LLC
Brian T. Nowell
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[2]Because Nowell is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents Nowell has submitted to this court in this matter.