

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES KEOHOKALOLE A/K/A  
CHARLES MICHAEL SMORSE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50891

**FILED**

SEP 18 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny auto and one count of failing to stop at the signal of a police officer. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant Charles Keohokalole a habitual criminal and sentenced him to serve two concurrent terms of 8 to 20 years each. The district court initially ordered Keohokalole to pay \$42,000 in restitution, but entered an amended judgment of conviction that modified the restitution to \$19,805.65. This timely appeal followed.

Keohokalole contends that the district court abused its discretion at sentencing and that the sentence constitutes cruel and unusual punishment. Keohokalole asserts that he took responsibility for the crimes by agreeing to habitual criminal treatment, the crimes are primarily nonviolent in nature, and a lesser penalty was available under the statute. We conclude that Keohokalole's contention lacks 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

crime.<sup>1</sup> While the district court's discretion is not limitless,<sup>2</sup> this court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</sup> 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>4</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>5</sup>

At the sentencing hearing, the prosecutor described the underlying offense where Keohokalole loaded the stolen motorcycle onto his truck, injured a witness with his truck while attempting to escape from the police, and led the police on a high-speed pursuit before surrendering. Keohokalole's sentence was within the statutory parameters of 5 to 20 years.<sup>6</sup> Keohokalole does not challenge the habitual criminal adjudication, to which he agreed in the signed guilty plea agreement. Considering Keohokalole's eight prior felony convictions, several involving stolen vehicles, he was eligible for a sentence under the

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<sup>1</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>2</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>3</sup>Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

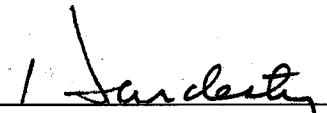
<sup>5</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

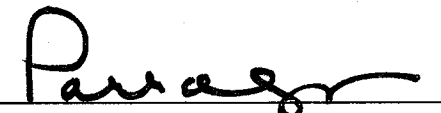
<sup>6</sup>NRS 207.010(1)(a).

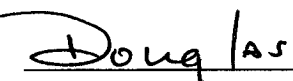
large habitual criminal statute, which provides a minimum of ten years imprisonment and a potential maximum of life without the possibility of parole.<sup>7</sup> The district court also had the discretion to impose consecutive sentences,<sup>8</sup> but declined to do so. Keohokalole does not argue that the statute is unconstitutional or that the district court relied on impalpable or highly suspect evidence. Under these circumstances, we conclude that the sentence was not cruel and unusual punishment and the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

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

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

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

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<sup>7</sup>NRS 207.010(1)(b).

<sup>8</sup>NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967).

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Charles Keohokalole  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk