

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALAN ENSMINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50908

FILED

JUL 11 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 assault with a deadly weapon, willfully endangering a child, and eluding a police officer. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Robert Alan Ensminger to serve three consecutive prison terms of 13-60 months

Ensminger contends that the district court abused its discretion by imposing a harsh and disproportionate sentence in violation of the United States Constitution.¹ Specifically, Ensminger claims that a less severe punishment would be more appropriate considering his age (26), "substance abuse problems, mental health problems with impulse control, his father's physical abuse and the victims' testimony that they never felt they would be harmed or felt threatened by [him]." We disagree.

¹See U.S. Const. amend. VIII.

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.² This court has consistently afforded the district court wide discretion in its sentencing decision.³ The district court's discretion, however, is not limitless.⁴ 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."⁵ 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.⁶

In the instant case, Ensminger 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.⁷ Further, at the sentencing hearing, the prosecutor detailed the

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

³Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁴Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

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


⁶Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

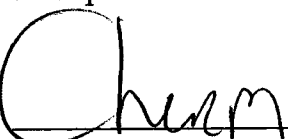
⁷See NRS 200.471(2)(b); NRS 200.508(1)(b)(1); NRS 484.348(3)(b).

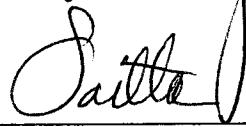
violent nature of Ensminger's crime, including his threat to kill the three victims, and provided information about his violent criminal history. And finally, we note that it is within the district court's discretion to impose consecutive sentences.⁸ Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____ J.

Maupin

_____ J.
Cherry


_____ J.
Saitta

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

⁸See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).