

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS E. SIMMONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51106

**FILED**

DEC 05 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 of possession of visual presentation depicting sexual conduct of a child. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Luis Simmons to a prison term of 12 to 30 months.

Simmons contends that the district court erred by imposing the sentence for the instant case to run consecutive to the sentence imposed for another conviction. Simmons asserts that the district court was under the false assumption that it could not impose concurrent sentences.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> This court will refrain from interfering with the sentence imposed “[s]o long as the record does not

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<sup>1</sup>See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.”<sup>2</sup> Moreover, regardless of its severity, “[a] sentence 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.”<sup>3</sup>

In the instant case, Simmons alleges that the district court relied on impalpable or highly suspect evidence; however, this allegation is belied by the record.<sup>4</sup> Although the district court stated that it did not think it could impose concurrent sentences, counsel corrected the district court. The district court stated during sentencing that it was imposing consecutive sentences because Simmons’ psychosexual evaluation results established that he was at a moderate risk to reoffend. Because Simmons was a probationer at the time the instant felony was committed, it was within the discretion of the district court to impose consecutive sentences.<sup>5</sup> Simmons does not allege that NRS 200.730 is unconstitutional, and we observe that the sentence imposed was within the statutory parameters.

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

<sup>3</sup>Blume 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).

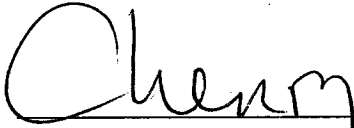
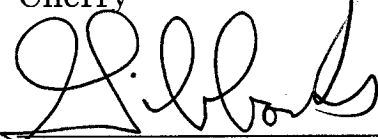
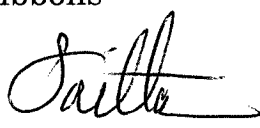
<sup>4</sup>Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

<sup>5</sup>See NRS 176.035(2).

We conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry  
  
\_\_\_\_\_, J.  
Gibbons  
  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Lee A. Gates, 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