

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW DEAN GOODNER A/K/A
JASON HILLIARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51148

FILED

DEC 24 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of three counts of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court adjudicated appellant Matthew Dean Goodner a habitual criminal and sentenced him to serve three prison terms of 5 to 20 years, with the first two terms to run concurrently with each other and consecutive to a sentence that Goodner was serving in another case, and the third term to run consecutive to the first two terms.

Goodner first contends that the district court violated his due process rights by considering unproven and dismissed charges at sentencing, and that such consideration led to the imposition of a consecutive sentence. We conclude that this contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ 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.”² The district court may “consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant.”³ This information may include charges that were dismissed pursuant to a plea agreement.⁴

In exchange for Goodner’s guilty plea, the State dismissed charges of murder with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, conspiracy to commit murder, and three counts of grand larceny auto. Goodner acknowledged in the guilty plea memorandum that “information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.” The district court’s consideration of the dismissed charges at sentencing was not

¹Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

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

³Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); see also NRS 176.015(6).

⁴Ferris v. State, 100 Nev. 162, 677 P.2d 1066 (1984).

improper, and Goodner fails to allege any other information improperly relied upon by the district court.

Moreover, Goodner's sentence was within the parameters of the small habitual criminal statute.⁵ The district court had the authority and the discretion to impose consecutive sentences.⁶ In the guilty plea memorandum, Goodner stipulated to small habitual criminal treatment, agreed to a prison sentence of 5 to 20 years on each count, and acknowledged the State's right to argue for, and the district court's authority to impose, either concurrent or consecutive sentences.

Goodner also contends that his equal protection rights were violated when he received a sentence that was disproportionate to the treatment received by his codefendant. The codefendant's case, consisting of only the murder and conspiracy charges, was dismissed. We have stated that there is no legal requirement that codefendants receive identical punishment.⁷ Moreover, Goodner's equal protection argument is cursory, and he does not assert that he is in a protected class or that the sentence imposed lacked a rational basis.⁸ Accordingly, we conclude that this contention lacks merit.

⁵NRS 207.010(1)(a) (setting forth a term of 5 to 20 years).

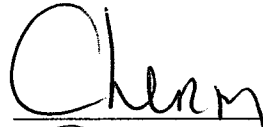
⁶NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967).

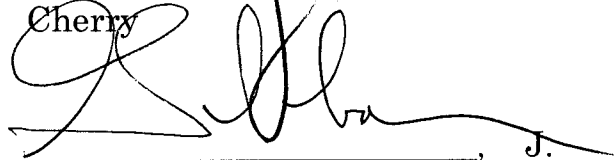
⁷Nobles v. Warden, 106 Nev. 67, 787 P.2d 390 (1990).


⁸See Gaines v. State, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000) (setting forth the legal framework for an equal protection analysis).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Kenneth G. Frizzell III
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk