

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID SIEVERS, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51282

FILED

SEP 09 2008

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 burglary. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant David William Sievers, II, to serve a prison term of 18 to 60 months to run consecutively to any other sentence he may be serving. Sievers was ordered to pay \$700.00 in restitution, and he was given credit for 73 days of time served.

Sievers contends that the district court abused its discretion at sentencing. Sievers argues that the district court should have imposed a minimum term of 12 months as recommended by the Department of Parole and Probation. Sievers asserts that a lesser prison sentence would have motivated him to resolve his drug addiction and become a productive member of society, and that the longer prison term merely drains society's resources. We conclude that Sievers' contention lacks merit.

While the district court's discretion is not limitless,¹ this court has consistently afforded the district court wide discretion in its

¹Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

sentencing decision.² 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.”³ 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.⁴

Sievers’ sentence was within the statutory parameters.⁵ Sievers does not argue that the relevant statutes are unconstitutional or that the district court relied on impalpable or highly suspect evidence. Further, we disagree with Sievers’ argument that district court abused its discretion in not imposing the minimum sentence. The record reveals that Sievers admitted to willfully and unlawfully entering Wells Fargo Bank in May 2006, with the intent to commit uttering a forged instrument therein. At the sentencing hearing, the prosecutor advised the district court that Sievers had seven prior felony convictions, including a 1994 California

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

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

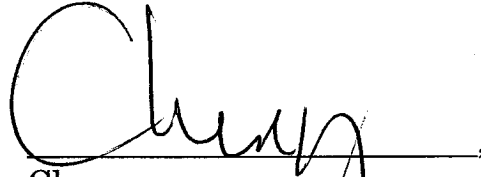
⁴Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

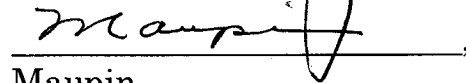
⁵NRS 205.060(2) (providing that a person convicted of burglary shall be sentenced to a minimum prison term of not less than one year and a maximum prison term of not more than ten years); NRS 193.130 (stating that the minimum prison term imposed must not exceed forty percent of the maximum term imposed).


burglary conviction. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk