

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WILLIAM GIBSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51351

FILED

DEC 03 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 jury verdict, of four counts of lewdness with a child under the age of 14 years. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant James William Gibson to serve four consecutive terms of life in prison with the possibility of parole after ten years.

In this appeal from the judgment of conviction, Gibson raises a single issue. He argues that a life sentence for lewdness with a child, as required under NRS 201.230, is cruel and unusual punishment in violation of the United States and Nevada Constitutions¹ because the sentence is grossly disproportionate to the offense. In particular, he points out that he received a life sentence for fondling a child but could have

¹U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

received a lesser sentence for second-degree murder,² a more serious offense. We conclude that Gibson's claim lacks merit.

As this court has recognized, the Legislature is empowered, within constitutional limits, to define crimes and fix punishments, and this court should not "encroach upon that domain lightly."³ Consistent with this separation of powers, this court has held that, regardless of its severity, a sentence that is 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."⁴ Similarly, the United States Supreme Court has held that the Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.⁵

²NRS 200.030(5)(b) (providing for a 10-to-25 year sentence). The statute also allows for a sentence of life with the possibility of parole after ten years. NRS 200.030(5)(a).

³Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978).

⁴Blume 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).

⁵Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

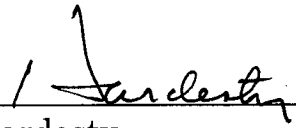
The Legislature has fixed the punishment for lewdness with a child under the age of 14 years at life in prison with the possibility of parole after ten years, unless the defendant has a prior conviction for the same offense or another sexual offense against a child.⁶ In this case, the district court imposed a sentence within the statutory limits. Because Gibson does not challenge the constitutionality of the statute, we are faced only with the question of whether the statutory sentence is grossly disproportionate to the offense. Contrary to Gibson's suggestion, a comparison of penalties for different, unrelated offenses is irrelevant to that inquiry. Gibson cites no controlling authority in support of that approach and the jurisdiction that he does cite, Illinois, has rejected that approach since the decisions cited by Gibson.⁷ We are not convinced that the sentence fixed by the Legislature for lewdness with a child is grossly or unreasonably disproportionate to the offense so as to shock the conscience. The sentence therefore is not unconstitutional.

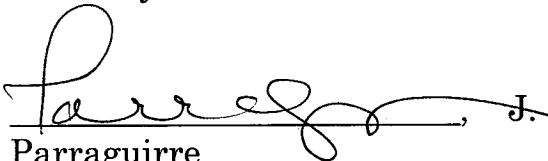
⁶NRS 201.230(2)-(3).

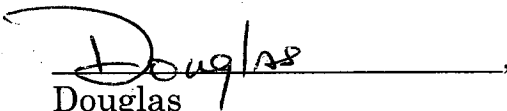
⁷People v. Sharpe, 839 N.E.2d 492, 517 (Ill. 2005) (“A defendant may no longer challenge a penalty under the proportionate penalties clause by comparing it with the penalty for an offense with different elements.”). We further note that the Illinois Constitution includes a proportionality provision that is very different from the cruel or unusual punishments clause in the Nevada Constitution. Compare Ill. Const. art. I, § 11 (providing that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship”), with Nev. Const. art. 1, § 6 (“[N]or shall cruel or unusual punishments be inflicted . . .”).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk