


IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WOODROW JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51586

**FILED**

MAR 26 2009

TRACIE A. 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 possession of a controlled substance, a category E felony. Eighth Judicial District Court, Clark County; David B. Barker, Judge. The district court sentenced appellant Michael Woodrow Johnson to serve a term of 12 to 34 months in prison.

Johnson contends that the district court abused its discretion by imposing a harsh and disproportionate sentence in violation of the United States and Nevada Constitutions. See U.S. Const. amend. VIII; Nev. Const. art. I, § 6. Specifically, Johnson claims that imposing the “near maximum sentence allowed by law” amounts to cruel and unusual punishment because he did not physically injure anyone during the course of the crime for which he was convicted. We disagree.

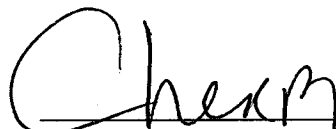
The United States and Nevada Constitutions do not require strict proportionality between crime and sentence, but forbid only an extreme sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). This court has consistently afforded the district court wide discretion in its

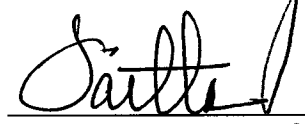
sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court's discretion, however, is not limitless. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Nevertheless, we will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). 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. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

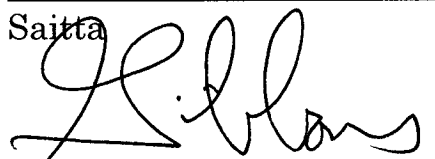
In the instant case, Johnson does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. In fact, the sentence imposed was well within the parameters provided by the relevant statutes. See NRS 453.336(2)(a); NRS 193.130(2)(e). Johnson sold a rock of cocaine to an undercover police officer, and the district court noted at sentencing that Johnson had eight prior felony convictions, most of which related to narcotics and included relatively recent convictions for distribution of Schedule I or II narcotics, as well as seven misdemeanor convictions that included charges for drug possession and paraphernalia, and weapons in a vehicle. We conclude that the district court did not abuse its discretion and the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. David B. Barker, 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