IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL RAY SESSIONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51597

FILED

JAN 14 2009

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 felony count of driving under the influence (DUI). Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Daniel Ray Sessions to serve a prison term of 12-48 months and ordered him to pay a fine of $2,000.

Sessions contends that the district court abused its discretion at sentencing. Specifically, Sessions claims that "[t]he best protection society could get is a permanent positive resolution" of his alcohol addiction and that the treatment program option provided for in NRS 484.37941 would be more appropriate than a term of incarceration. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Sessions argues that this court should review the sentence imposed by the district court to determine whether justice was done. We disagree.

---

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

09-01156

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[3] This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] 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."[6] 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.[7]

In the instant case, Sessions does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

---

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

[4]Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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

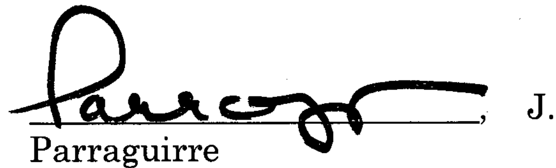
[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

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

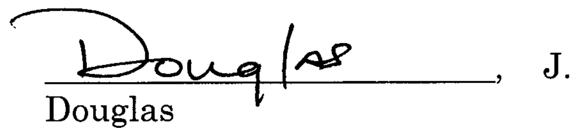
statute.[8] And finally, we note that Sessions has an extensive criminal history consisting of fifty misdemeanor and five felony convictions, with twelve DUI convictions included within that total. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.



_______________, J.
Parraguirre



_______________, J.
Douglas

_______________, J.
Pickering

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

---

[8]See NRS 484.3792(1)(c) (category B felony punishable by a prison term of 1-6 years and a fine not less than $2,000).