

IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR RAUL AVALOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51637

FILED

MAY 13 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted possession of a credit or debit card without the cardholder's consent. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Hector Raul Avalos to a prison term of 12 to 30 months.

Avalos contends that the district court abused its discretion at sentencing and the sentence imposed constitutes cruel and unusual punishment. Specifically, Avalos asserts that because he indicated that he did not intend to permanently injure the victim, "a County jail sentence would have been more in keeping with notions of a fair sentence."

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. Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion). This court has consistently afforded the district court wide discretion in its sentencing decision. 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

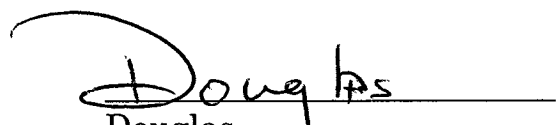
“[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Despite its severity, a sentence within the statutory 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).

Here, Avalos does not allege that the relevant sentencing statute is unconstitutional or that the district court relied on impalpable or highly suspect evidence. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes and the sentence does not shock the conscience. See NRS 193.130(2)(e); NRS 193.330(1)(a)(5); NRS 205.690(2). Therefore, we conclude that the district court did not abuse its discretion at sentencing and the sentence imposed does not constitute cruel and unusual punishment.

Having considered Avalo’s contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Eighth Judicial District Court Dept. 15, 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