

IN THE SUPREME COURT OF THE STATE OF NEVADA

CALVIN DEMETRIUS WALKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51762

**FILED**

**JUN 18 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, entered pursuant to a jury verdict, of one count of burglary and one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Michael Villani, Judge. The district court adjudicated appellant Calvin Demetrius Walker a habitual criminal and sentenced him to serve two concurrent prison terms of 10 to 25 years.

Continuance

Walker contends that the district court's "refusal to compel the production of an essential witness during the trial deprived [him] of his due process pursuant to the 5th and 6th Amendments." Walker claims that the witness was on his witness list; he located her in the county jail, but was unable to subpoena her for trial; she was a material witness because she was the only occupant of the alleged stolen vehicle that was not charged with a crime; and the district court's unwillingness to continue the trial meant that his case proceeded without this defense witness. We construe this contention as a claim that the district court abused its discretion by denying Walker's request for a continuance.

“The decision to grant or deny trial continuances is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion.” Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996). The denial of a motion for a reasonable continuance may “be an abuse of discretion where the purpose of the motion is to procure important witnesses and the delay is not the particular fault of counsel or the parties.” Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 557 (1991), limited on other grounds by Summers v. State, 122 Nev. 1326, 148 P.3d 778 (2006). To determine whether an abuse of discretion occurred, this court weighs the prejudice to the defendant if the continuance is denied against the prejudice to the district court and the administration of justice if the continuance is granted. See Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000).

Here, after the jury was seated and the State began presenting its case-in-chief, Walker asked the district court for an order compelling the production of Annabelle Thomas from the county jail. The district court was willing to sign the order, but was unwilling to continue the trial for another day. The district court also expressed surprise that Walker wanted to call Thomas as a witness – it felt that she would be more helpful to the State than to the defense. Walker did not make a proffer as to how Thomas would testify or whether her testimony would be material to his defense. Consequently, Walker failed to demonstrate that Thomas was an important witness. Under these circumstances, any prejudice Walker may have sustained from the denial of the continuance was minimal and we conclude that the district court did not abuse its discretion by denying the continuance.

### Cruel and Unusual Punishment

Walker also contends that the district court abused its discretion at sentencing. Walker specifically claims that the imposition of a mandatory sentence of 10 to 25 years for a minor felony pursuant to his adjudication as a habitual criminal constitutes cruel and unusual punishment.

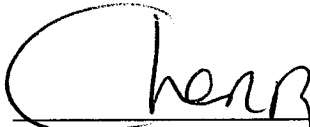
We have consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration 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). 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 as to shock the conscience. Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).


Here, the record on appeal reveals that the district court considered Walker’s six prior felony convictions, knew that habitual criminal adjudication was discretionary, and declined to exercise its discretion to dismiss the habitual criminal counts. See O’Neill v. State, 123 Nev. 9, 16-17, 153 P.3d 38, 43 (2007), cert. denied, \_\_\_ U.S. \_\_\_, 128 S.Ct. 153 (2007). Walker has not alleged that the district court relied on impalpable or highly suspect evidence, nor has he alleged that the relevant statute is unconstitutional. We note that the sentence imposed falls within the parameters provided by the relevant statute, see NRS

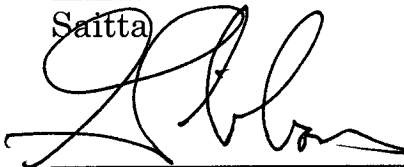
207.010(1)(b)(3), and we conclude that Walker's sentence does not constitute cruel and unusual punishment.

Having considered Walker's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Michael Villani, District Judge  
Albright Stoddard Warnick & Albright  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk