

IN THE SUPREME COURT OF THE STATE OF NEVADA

AKAPHONG SOMEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51889

FILED

JAN 22 2009

TRAGIE 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 count each of conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Akaphong Somee to serve a prison term of 24 to 60 months for the conspiracy conviction and to serve two equal and consecutive prison terms of 72 to 180 months for the robbery with the use of a deadly weapon conviction. The sentences for each count were imposed concurrently to each other.

Somee's sole contention is that the district court abused its discretion by imposing an excessive sentence. Specifically, Somee argues that the district court violated the Eighth Amendment prohibition against cruel and unusual punishment by imposing sentences that were disproportionate to the seriousness of the offenses. U.S. Const. Amend. VIII.

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. Harmelin v. Michigan, 501 U.S.

957, 1000-01 (1991) (plurality opinion). 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.’” Blume 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).

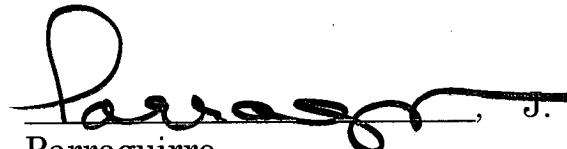
This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). This court will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from 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).

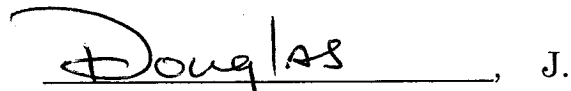
In the instant case, Somee does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentences imposed were within the parameters provided by the relevant statutes. NRS 200.380(2); NRS 199.480(1)(a); 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165). Finally, we disagree that the sentences were excessive or so disproportionate to the offenses as to shock the conscience. The charged offenses involved Somee and another individual restraining a shopkeeper and robbing her with the use of a deadly weapon. At the sentencing hearing, the State noted that the victim, who had been sexually assaulted by the other assailant during the crime, had been so traumatized that she could no longer work at the store by herself.

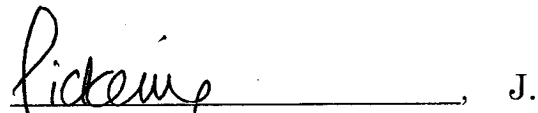
Further, at the time of Somee's sentencing, he was serving a sentence in Arkansas for second-degree murder. Accordingly, the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.


Parraguirre


Douglas


Pickering

cc: Hon. Donald M. Mosley, District Judge
Michael P. Printy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk