IN THE SUPREME COURT OF THE STATE OF NEVADA

MIANE JEAN VANDERVALK A/K/A MIANNE VANDERVALK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51898

FILED

JAN 09 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 count each of battery with the use of a deadly weapon causing substantial bodily harm and conspiracy to commit battery with the use of a deadly weapon causing substantial bodily harm. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Miane Jean Vandervalk to serve a prison term of 72-180 months and a concurrent jail term of 12 months. The district court ordered Vandervalk to pay $75,856.17 in restitution.

Vandervalk contends that the district court abused its discretion by imposing a sentence constituting cruel and unusual punishment.[1] Specifically, Vandervalk claims her sentence is unconstitutionally disproportionate because the "crime was committed with a much larger, physically stronger male codefendant who instigated

[1]See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

the fight," and therefore, she was "arguably the less culpable party." We disagree with Vandervalk's contention.

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.[2] This court has consistently afforded the district court wide discretion in its sentencing decision.[3] The district court's discretion, however, is not limitless.[4] 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."[5] 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.[6]

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

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

[3]Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

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

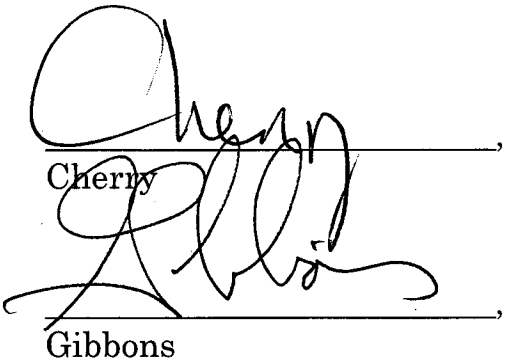
[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

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

relevant statutes.[7] Further, at the sentencing hearing, the exceedingly violent nature of the crime and Vandervalk's participation in it were addressed and considered by the district court, who noted that the victim was "lucky to get out of there alive." Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Saitta

cc: Hon. Donald M. Mosley, 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

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[7]See NRS 200.481(2)(e)(2) (category B felony punishable by a prison term of 2-15 years); NRS 199.480(3)(g) (conspiracy punishable as a gross misdemeanor).