

IN THE SUPREME COURT OF THE STATE OF NEVADA

JELEE DELOS WHITE A/K/A DELOS
WHITE JELEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51931

FILED

MAR 24 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 of possession of a controlled substance with intent to sell, a category D felony. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. The district court sentenced appellant Jelee Delos White to serve a prison term of 19 to 48 months, to run consecutively to the sentences imposed in two other criminal cases.

White contends that the district court abused its discretion by imposing a harsh and disproportionate sentence in violation of the United States and Nevada Constitutions. See U.S. Const. amend. VIII; Nev. Const. art. I, § 6. Specifically, White claims that a four-year prison term is so disproportionate to the crime of possession that it shocks the conscience and amounts to cruel and unusual punishment. We disagree.

The United States and Nevada Constitutions do not require strict proportionality between crime and sentence, but forbid only an extreme sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). This court has consistently afforded the district court wide discretion in its

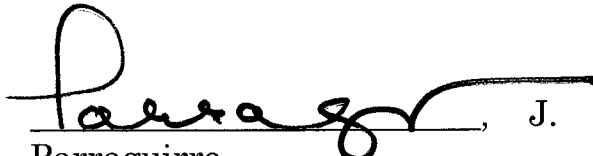
sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court's discretion, however, is not limitless. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Nevertheless, we will refrain from interfering with the sentence imposed "[s]o long as the record 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). Finally, we note that it is within the district court's discretion to impose consecutive sentences. See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 302-03, 429 P.2d 549, 552 (1967).

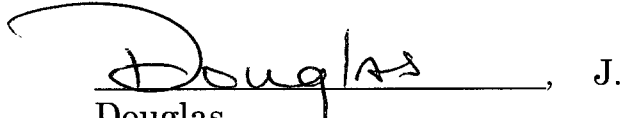
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. The sentence imposed is within the parameters provided by the relevant statutes. See NRS 453.337; NRS 193.130(2)(d). Further, our review of the record reveals that in this case White was on probation in drug court when he was arrested with 11 grams of rock cocaine in his possession, and he has four prior drug related convictions for trafficking and possession with intent to sell. To the extent White claims that his consecutive sentence was imposed in error because the State agreed to recommend concurrent sentences, we note that White was informed in the written guilty plea agreement that the district court had discretion to impose consecutive sentences without regard to the

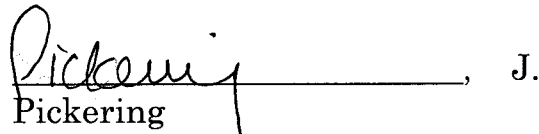
State's recommendations. Accordingly, we conclude that the district court did not abuse its discretion and the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Elizabeth Goff Gonzalez, 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