IN THE SUPREME COURT OF THE STATE OF NEVADA

MARKUS GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52036

FILED

JAN 26 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of burglary and grand larceny. Eighth Judicial District Court, Clark County; David B. Barker, Judge. The district court adjudicated appellant Markus Gray a habitual criminal and sentenced him to serve two concurrent prison terms of 60 to 150 months.

Gray contends that his sentence constituted cruel and unusual punishment. Specifically he argues that the district court abused its discretion by imposing sentences that were disproportionate to the seriousness of the non-violent offenses.

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

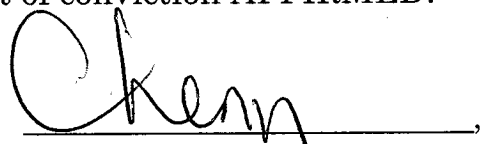
(1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

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).

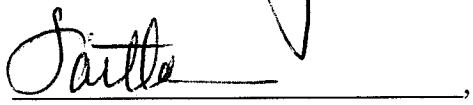
In the instant case, Gray does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. The sentences imposed were within the parameters provided by the relevant statute. NRS 207.010(1)(a). Further, the guilty plea agreement, which Gray signed, provided that the State retained the right to argue for small habitual criminal treatment at sentencing and would not oppose concurrent sentences if small habitual treatment was imposed. Finally, we disagree that the sentences were so disproportionate to the offenses as to shock the conscience. The district court adjudicated Gray a small habitual criminal after noting that his criminal history spanned the prior 35 years and included 10 felony convictions and 33 misdemeanor convictions. It further recognized that he had only been out of custody for approximately one year when he committed the instant offense. Accordingly, the sentences imposed do not constitute cruel and unusual punishment.

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

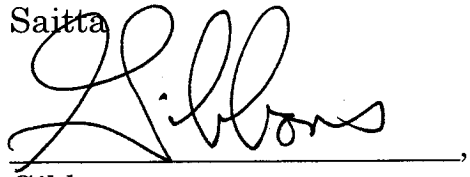
ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. David B. Barker, 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