

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRECK WARDEN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52091

BRECK WARDEN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52108

FILED

JUN 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from judgments of conviction, pursuant to guilty pleas. Docket No. 52091 is an appeal from a judgment of conviction for one count of grand larceny. Docket No. 52108 is an appeal from a judgment of conviction for one count of burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge (No. 52091); and Jackie Glass, Judge (52108). The district courts adjudicated appellant Breck Warden Smith a large habitual criminal in both cases and sentenced him to two concurrent prison terms of 10 years to life. We elect to consolidate these appeals for disposition. NRAP 3(b).

Smith contends in both appeals that his sentences are cruel and unusual because his crimes were non-violent.


This court has consistently afforded the district courts wide discretion in their sentencing decisions. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1370 (1987). This court will refrain from interfering with a 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). Moreover, regardless of its severity, “[a] sentence 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, 348-49, 871 P.2d 950, 953 (1994).

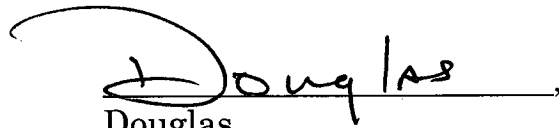
In the instant case, Smith does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentences imposed are within the parameters provided by the relevant statutes. See NRS 207.010(1)(b)(2) (setting forth a sentence of 10 years to life based on adjudication as a habitual criminal). NRS 207.010 does not restrict habitual criminal adjudication only to violent crimes. Therefore, we conclude that Smith’s sentences are not cruel or unusual.¹

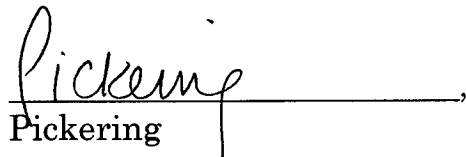
¹We note that at sentencing the State produced six judgments for convictions of prior felonies. NRS 207.010(1)(b) only requires three.

Having considered Smith's contention and determined that it was without merit, we

ORDER the judgments of conviction AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Eighth Judicial District Court Dept. 7, District Judge
Hon. Jackie Glass, 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