

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON A/K/A
DELARIAN KAMERON WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52104

FILED

JUL 07 2009

THACIE A. 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 two counts of robbery with the use of a deadly weapon and one count of sexual assault. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court sentenced appellant Delarian Kameron Wilson to prison terms of 72 to 180 months for the robbery counts, plus equal and consecutive sentences for the deadly weapon enhancements, and ten years to life for the sexual assault, all terms to run consecutively.

Wilson contends that his sentence was excessive for two reasons: (1) his sentence was unreasonably disproportionate to his codefendant's sentence, and (2) the district court relied on highly suspect or impalpable evidence.

This court has consistently afforded the district court wide discretion in its sentencing decisions. 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). 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, 871 P.2d 950, 953 (1994). In considering whether a sentence is grossly disproportionate to an offense, a court must consider not only the gravity of the current offense, but also the seriousness of a defendant’s criminal history. Ewing v. California, 538 U.S. 11, 28-29 (2003) (Kennedy, J., concurring).

Wilson first contends that his sentence was unreasonably disproportionate to the sentence that his codefendant, Narcus Wesley, received. Particularly, Wilson contends that the district court failed to take into account his remorse for the crime, his accepting responsibility for his actions by pleading guilty, his lack of prior convictions, and the fact that he did not actually commit the sexual assaults, but rather merely assisted and encouraged them. In contrast, Wesley expressed no remorse at the sentencing hearing, placed all the blame for the crimes on Wilson, and committed the actual sexual assault of the female victim. Wesley opted for his right to trial and was convicted on 18 counts. The district court sentenced Wesley to concurrent terms on all counts.¹

¹Wilson cites to Biondi v. State, 101 Nev. 252, 699 P.2d 1062 (1985), in support of his claim that such disparity in sentencing is
continued on next page . . .

Although Wilson did not have a significant criminal history, the gravity of the crime supported the severity of Wilson's sentence. Wilson and Wesley robbed six individuals in their residence at gunpoint. Wilson took one of the victims to an ATM machine, and when he returned, Wilson and Wesley forced two of the victims to participate in sexual acts with each other, and then Wesley further sexually assaulted the female victim. The district court justified a more severe sentence for Wilson based on his role as "ring leader" of the robbery. "[S]entencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms," Nobles v. Warden, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990) (citing People v. Walford, 716 P.2d 137 (Colo. App. 1985)), and it is within the discretion of the district court to impose consecutive sentences. See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). Moreover, Wilson has not contended that the relevant sentencing statutes are unconstitutional² or that the

... continued

unconstitutional. Biondi was a death penalty case in which this court conducted a proportionality review of the death sentence pursuant to former NRS 177.055(2) and has no applicability to the present case.

²Wilson appears to briefly argue that when sentenced to a deadly weapon enhancement, a jury must make the determination that the defendant used a deadly weapon in the commission of a crime pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000). Wilson pleaded guilty to robbery with the use of a deadly weapon and admitted to facts supporting the enhancement; thereby waiving the right to a jury determination as to whether he used a deadly weapon. See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may

continued on next page ...

sentences are not within the statutory limits.³ Thus, the district court did not abuse its discretion at sentencing.

Second, Wilson contends that the district court relied on highly suspect and impalpable evidence in determining that he was the “ring leader” behind the crime. Particularly, Wilson contends that the district court relied on evidence adduced at Wesley’s trial, and by relying on such evidence, supported Wesley’s defense theory that he acted under duress when committing the crime, which the jury had rejected.⁴

The district court’s wide discretion in its sentencing determinations enables the sentencing judge to consider a wide, largely unlimited variety of information to ensure that the punishment fits not only the crime, but also the individual defendant. Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996). Wilson has not cited to any legal authority to support his claim that the district court cannot consider evidence presented at a codefendant’s trial in determining the proper sentence for a defendant. See Maresca v. State, 103 Nev. 669, 673, 748

... *continued*

impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant”).

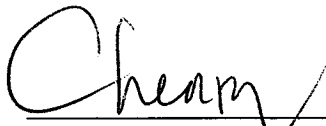
³See NRS 200.380(2) (setting forth a sentence of 2 to 15 years for robbery); 1995 Nev. Stat., ch. 455, §1 at 1431 (setting forth an equal and consecutive sentence for use of a deadly weapon); NRS 200.366(2)(b) (setting forth a sentence of ten to life for sexual assault).


⁴Wesley’s trial transcripts were not included as a part of the record and the victims did not testify at the sentencing hearing. We further note that the jury’s rejection of Wesley’s defense of duress does not amount to the conclusion that Wilson was not the ring leader.


P.2d 3, 6 (1987) (holding that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court"). Thus, we decline to address this claim further.

Having considered Wilson's contentions and determined they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James M. Bixler, District Judge
Draskovich & Oronoz, P.C.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk