IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL DAVID ADDIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52139

FILED

JUL 06 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 of injury to property. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge. The district court sentenced appellant Paul David Addis to serve a prison term of 12-48 months and ordered him to pay $25,000 in restitution.[1]

First, Addis contends that the State of Nevada and Pershing County lacked jurisdiction to prosecute because his offense was committed

[1]Although this court has elected to file the fast track statement submitted by Addis, we note that it fails to comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e). Specifically, Addis improperly submitted two documents—a "fast track statement" and "appellant's opening brief"—and failed to follow the formatting required by NRAP Form 6. Further, Addis failed to include transcripts of the arraignment and sentencing hearings and the formal guilty plea agreement in the appendix. See NRAP 3C(e)(2); NRAP 30(b)(1), (2). Counsel for Addis is cautioned that failure to comply with the requirements for fast track statements and appendices in the future may result in both being returned, unfiled, to be correctly prepared, and may also result in the imposition of sanctions by this court. NRAP 3C(n).

in the Black Rock Desert, on federal land managed by the Bureau of Land Management. We disagree.[2]

"Every person . . . is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States." NRS 171.010; Pendleton v. State, 103 Nev. 95, 98, 734 P.2d 693, 695 (1987). This court has long held that it is not "incumbent upon the state to prove further than that the offense was committed within the county." State v. Buckaroo Jack, 30 Nev. 325, 334, 96 P. 497, 497 (1908). The Buckaroo Jack court further stated that if an exception to jurisdiction exists, the burden of proof lies with the defendant. See id. at 335, 96 P. at 498 (quoting State v. Ta-cha-na-tah, 64 N.C. 614 (1870)); see also Pendleton, 103 Nev. at 99, 734 P.2d at 695 ("The defendant has the burden of showing the applicability of negative exceptions in jurisdictional statutes.").

Here, Addis has not offered any argument, let alone demonstrated, that jurisdiction in his case rested exclusively in federal court, thus failing to satisfy his burden of proving a lack of jurisdiction. See Buckaroo Jack, 30 Nev. at 334-36, 96 P. at 497-98. In fact, Addis has neither argued nor demonstrated that the state district court did not have jurisdiction. Instead, Addis contends that "the burden should rest upon the State to disprove a jurisdictional exception," and therefore, Nevada law "should be abandoned and changed." Addis has not provided any legal

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[2]The State claims that Addis failed to preserve this issue for review on appeal. A challenge to the subject matter jurisdiction of a district court, however, is not waivable and "can be raised for the first time on appeal." See Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002).

authority or persuasive argument in support of his contention, and we decline his request to reconsider the established, long-standing state of the law with regard to jurisdiction.

Second, Addis contends that the district court abused its discretion by imposing a sentence constituting cruel and unusual punishment in violation of the United States Constitution. See U.S. Const. amend. VIII. Specifically, Addis claims that the sentence imposed was grossly disproportionate to the crime because his offense, which involved lighting the Burning Man structure on fire thus causing it to burn to the ground, was "an act of radical free expression" and no more than "burn[ing] a pile of wood a few days ahead of schedule." We disagree with Addis' contention.[3]

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. Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion). This court has consistently afforded the district court wide discretion in its sentencing decision. 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,

[3]Addis was initially charged with an additional count of first-degree arson.

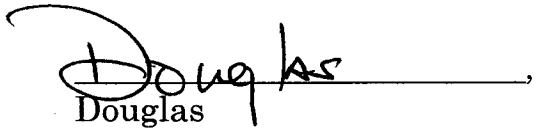
94, 545 P.2d 1159, 1161 (1976). Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004), limited on other grounds by Knipes v. State, 124 Nev. ___, 192 P.3d 1178 (2008).

In the instant case, Addis 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 relevant statutes. See NRS 206.310; NRS 193.155(1); NRS 193.130(2)(c) (category C felony punishable by a prison term of 1-5 years). We also note that it is within the district court's discretion to impose probation. See NRS 176A.100(1)(c). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

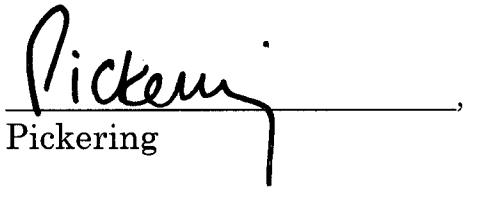
Having considered Addis' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Richard Wagner, District Judge
Belanger & Plimpton
Pershing County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Pershing County District Attorney
Pershing County Clerk