

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLAN JOSUE MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52200

**FILED**

JAN 09 2009

TRACEY K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted robbery. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Allan Josue Martinez to serve a prison term of 16-72 months and ordered him to pay \$11.98 in restitution.

Martinez contends that the district court abused its discretion at sentencing. Specifically, Martinez claims that the sentence imposed is excessive “[g]iven the unremarkable facts of the instant case,” which included taking “a 12-pack of beer valued at \$11.98.” Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Martinez argues that this court should review the sentence imposed by the district court to determine whether justice was done. We disagree.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but

<sup>1</sup>113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

<sup>2</sup>107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

forbids only an extreme sentence that is grossly disproportionate to the crime.<sup>3</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> The district court's discretion, however, is not limitless.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>

In the instant case, Martinez 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.<sup>8</sup> And finally, to the extent that Martinez claims that the district court failed to exercise its discretion by imposing the sentence

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<sup>3</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>4</sup>Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

<sup>5</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>6</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

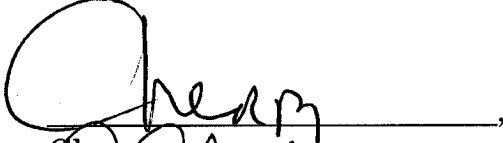
<sup>7</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

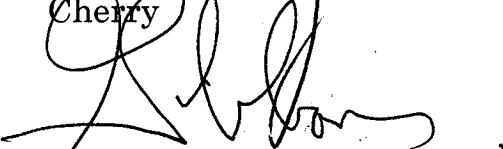
<sup>8</sup>See NRS 200.380(2); NRS 193.330(1)(a)(2) (attempt to commit a category B felony punishable by a prison term of 1-10 years).

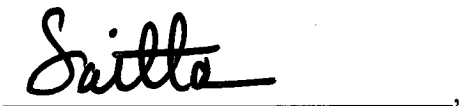
recommended by the Division of Parole and Probation, we disagree. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

  
Cherry, J.

  
Gibbons, J.

  
Saitta, J.

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk