

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICCO TATUM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52787

**FILED**

MAY 01 2009  
TRACIE 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 murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge. The district court sentenced appellant Nicco Tatum to serve a prison term of 42 to 192 months, with a consecutive term of 36 to 120 months for the use of a deadly weapon. The district court ordered the sentence to run consecutively to the sentence imposed in another criminal case, and to run concurrently with the sentence imposed in yet another criminal case.

Tatum contends that the district court abused its discretion by imposing a harsh and disproportionate sentence in violation of the United States and Nevada Constitutions. See U.S. Const. amend. VIII; Nev. Const. art. I, § 6. Specifically, Tatum claims that it was an abuse of discretion to run his sentence consecutively to the sentence imposed in another criminal case because requiring Tatum to serve a minimum of 21½ years and a maximum of 66 years in prison shocks the conscience and amounts to cruel and unusual punishment. We disagree.


The United States and Nevada Constitutions do not require strict proportionality between crime and sentence, but forbid only an extreme sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). 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). 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 palpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 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). It is within the district court's discretion to impose consecutive sentences. See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 302-03, 429 P.2d 549, 552 (1967).

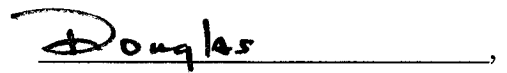
In the instant case, Tatum does not allege that the district court relied on palpable or highly suspect evidence or that the relevant statutes are unconstitutional. The sentence imposed is within the parameters provided by the relevant statutes. See NRS 200.030; NRS 193.330(1)(a)(1); NRS 193.165(1). In this case involving the shooting of six children at a school bus stop, Tatum pled guilty to one count of attempted murder with the use of a deadly weapon in exchange for the dismissal of

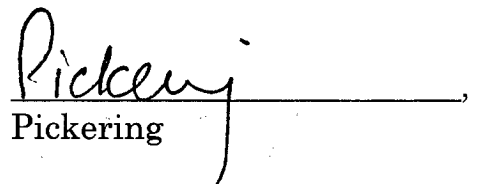
numerous other counts. When sentencing Tatum, the district court noted that less than a week prior to the instant incident, Tatum shot a woman in front of her three children, leaving her confined to a wheelchair, and after being taken into custody, Tatum picked up another felony charge for biting the arm of a correctional officer so severely that the officer suffered nerve damage. The district court further noted that the sentence for the deadly weapon enhancement was "based upon [Tatum's] juvenile record, [his] adult record, the severity of this crime, the likelihood that many other individuals could have been seriously injured in this case as well as all the other cases and [his] conduct after being arrested." We conclude that the district court did not abuse its discretion and the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Bellon & Maningo, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk