

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN NEILAN HAAK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52971

FILED

OCT 07 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Gray
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. The district court sentenced appellant Brian Neilan Haak to serve a prison term of 48-120 months and ordered him to pay \$549,974.03 in restitution jointly and severally with his codefendant.

Haak contends that the district court abused its discretion at sentencing by relying on highly suspect and impalpable evidence. Specifically, Haak claims that the court relied upon the presentence investigation report (PSI) prepared for his codefendant-wife's sentencing without providing him with a copy in violation of Rice v. State, 113 Nev. 1300, 1314-16, 949 P.2d 262, 271-72 (1997), modified on other grounds by Richmond v. State, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002) and abrogated on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006). We disagree with Haak's contention.

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, 94, 545 P.2d 1159, 1161 (1976) (emphasis added). 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).

We conclude that Haak has failed to demonstrate that the district court relied solely on impalpable or highly suspect evidence. Unlike the situation in Rice, it does not appear from the record that the codefendant’s PSI, not provided to Haak, influenced the district court’s sentencing determination in any meaningful way. See Rice, 113 Nev. at 1314-16, 949 P.2d at 271-72. Haak’s own PSI detailed his involvement in the crime and noted that he “encouraged [his wife’s] excessive illegal spending, as many of the items purchased were for his own use, or benefited him in some way.” His PSI further concluded that Haak “benefitted from the thefts equally with his wife, and [he] verbally stated during interview that he shares responsibility for financial damages.” As a result, the Division of Parole and Probation recommended the maximum sentence for Haak and equal responsibility for restitution.

In sentencing Haak, the district court addressed his egregious behavior prior to his arrest and ultimately followed the Division’s recommendation, including not placing him on probation. See NRS 176A.100(1)(c) (providing that the granting of probation is discretionary).

Haak does not allege that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute. NRS 205.060(2) (category B felony punishable by a prison term of 1-10 years). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

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