

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HENRY BLACKBURN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53066

**FILED**

**JUN 18 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of robbery. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant James Henry Blackburn to serve two consecutive prison terms of 26-120 months and ordered him to pay \$500 in restitution.

Blackburn contends that the district court abused its discretion by sentencing him to serve consecutive prison terms. Specifically, Blackburn claims that he “acknowledged his wrongdoing and expressed remorse” and the district court failed to consider such factors as his youth and “that there was almost no chance that mortal injury would have occurred to anyone involved in the robberies from the use of bear spray.” Citing to the dissents in Tanksley v. State, 113 Nev. 844, 850-53, 944 P.2d 240, 244-45 (1997) (Rose, J., dissenting) and Sims v. State, 107 Nev. 438, 441-46, 814 P.2d 63, 65-68 (1991) (Rose, J., dissenting) for support, Blackburn argues that this court should review the sentence imposed by the district court to determine whether justice was done. We disagree with Blackburn’s contention.

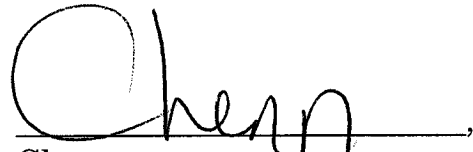
This court has consistently afforded the district court wide discretion in its sentencing decision. Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court's discretion, however, is not limitless. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Nevertheless, we 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). 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).

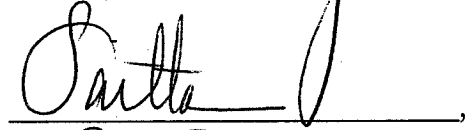
In the instant case, Blackburn does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute. See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years). Prior to sentencing Blackburn, the district court explained that, based on his history, "[i]t would be irrational and irresponsible for any court" to grant him a probationary term. See NRS 176A.100(1)(c) (providing that the granting of probation is discretionary). The district court also briefly discussed the "extremely dangerous" nature of Blackburn's offense. Finally, we note that 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). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Brent T. Adams, District Judge  
Michael V. Roth  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk