

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOREY ANTHONY CARTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53173

FILED

OCT 07 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 robbery. Eighth Judicial District Court, Clark County; David B. Barker, Judge. The district court sentenced appellant Torey Anthony Carter to serve a prison term of 36 to 120 months.

Carter contends that the district court abused its discretion at sentencing. Specifically, Carter argues that his sentence was grossly disproportionate to his participation in the crime and that the district court improperly considered his juvenile record when determining his sentence. We disagree.

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, 1000-01 (1991) (plurality opinion). A sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to

the offense as to shock the conscience.” Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

We have 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). 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). And, a district court may consider a defendant’s juvenile record when making a sentencing determination. Thomas v. State, 88 Nev. 382, 385, 498 P.2d 1314, 1316 (1972).

Here, Carter has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. The sentence imposed is within the parameters provided by the relevant statute, see NRS 200.380(2), and is not so unreasonably disproportionate to the crime as to shock the conscience. Further, we decline Carter’s request to reexamine our holding in Thomas. In so doing, we note that NRS 62H.030(3)(b) specifically permits the Division of Parole and Probation to inspect juvenile records which have not been sealed in order to prepare presentence investigation reports and that the district court may in turn rely on the presentence investigation report when imposing a sentence.

Accordingly, we conclude that that the district court did not abuse its discretion in sentencing Carter, and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. David B. Barker, District Judge
Terrence M. Jackson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk