

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WARREN DEAN WILCOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53198

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 one count of attempted battery with the intent to commit sexual assault. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant Kenneth Warren Dean Wilcox to serve a prison term of 96-240 months.

Wilcox contends that the district court abused its discretion by imposing a sentence constituting cruel and/or unusual punishment in violation of the United States and Nevada Constitutions. See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. Specifically, Wilcox claims that his sentence was unconstitutionally disproportionate because “[t]he defense, the prosecutor and the Division of Parole and Probation all conceded that this offense was on the low end of the spectrum of these types of offenses.” The Division recommended a prison term of 57-144 months. Wilcox further argues that he “has had a tough life” and expressed remorse. We disagree with Wilcox’s contention.

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, 1001 (1991) (plurality opinion). 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, Wilcox does not allege that his sentence was based 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. See NRS 200.400(4)(b); NRS 193.330(1)(a)(1) (attempt to commit a category A felony punishable as a category B felony and a prison term of 2-20 years). The presentence investigation report prepared by the Division informed the district court that Wilcox was previously convicted of attempted sexual assault and that he committed the instant offense while on lifetime supervision. Further, a psychosexual evaluation concluded that Wilcox represented a high risk to reoffend. The victim provided an impact statement at the sentencing hearing and noted the "terror and fear" and emotional suffering she experienced as a result of

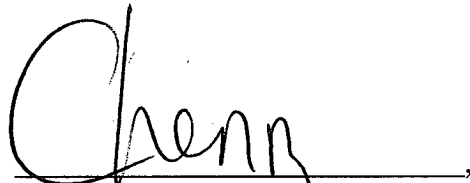
Wilcox's offense. After discussing Wilcox's difficulties with supervision after he expired his prison term for attempted sexual assault, the district court explained its sentencing decision:


[Y]ou are getting the maximum and the reason you are getting the maximum is because if I could lock you up forever I would. Because I do not believe that . . . you will ever be safe to be on the street.

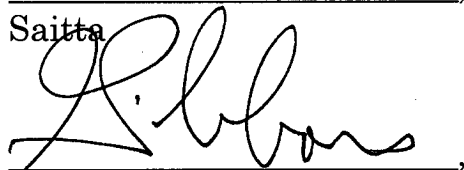
Based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Therefore, having considered Wilcox's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Catherine Cortez Masto/Carson City
Eureka County District Attorney
Eureka County Clerk