IN THE SUPREME COURT OF THE STATE OF NEVADA

GERARDO GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53310

FILED

SEP 24 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford plea, of burglary while in possession of a firearm (count 1), discharging a firearm at or into a structure (counts 2-6), and possession of a firearm by an ex-felon (count 8), and pursuant to a guilty plea, of battery on a police officer resulting in substantial bodily harm (count 7). North Carolina v. Alford, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Gerardo Garcia to a prison term of 60 to 180 months for count 1, a prison term of 24 to 60 months each for counts 2 through 6, a prison term of 48 to 120 months for count 7, and a prison term of 24 to 60 months for count 8, with the sentence for each count to run consecutively.

Garcia's sole contention on appeal is that the district court abused its discretion at sentencing. Specifically, Garcia contends that the district court imposed a sentence so disproportionate to his crimes that it violates the constitutional proscription against cruel and unusual punishment. See U.S. Const. amend. VIII. We disagree.

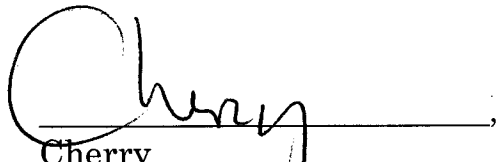
The United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme

sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). 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 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). 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).

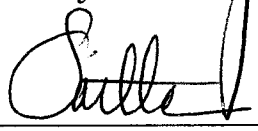
In the instant case, Garcia does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. In fact, the sentence imposed was within the parameters provided by the relevant statutes. See NRS 205.060(4); NRS 202.285(1)(b); NRS 200.481(2)(c); NRS 202.360(1)(a). The district court imposed a sentence that was consistent with the Division of Parole and Probation's sentencing recommendation. The presentence investigation report prepared by the Division revealed a lengthy and violent criminal history and, at the sentencing hearing, the prosecutor

detailed the violent nature of the instant crimes. Additionally, Garcia stipulated to consecutive sentences in the guilty plea agreement, which specified the maximum sentence that could be imposed for each count. Therefore, we conclude that the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry



_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk