

IN THE SUPREME COURT OF THE STATE OF NEVADA

HANLEY JACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53329

FILED

SEP 23 2009

FRANCIE N. LINDEMAN
CLERK OF SUPREME COURT
BY *D. Hoover*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of violating the terms of lifetime supervision, a category B felony. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge. The district court sentenced appellant Hanley Jack to serve a prison term of 28 to 72 months, to run concurrently with his sentence for the underlying conviction of lewdness with a child under 14 years of age.

Jack contends that the district court abused its discretion by sentencing him to prison because he is an older man who does not pose a threat to anyone. Accordingly, he claims, sentencing him to prison shocks the conscience and violates the prohibition against cruel and unusual punishment set forth in the Eighth Amendment to the United States Constitution.

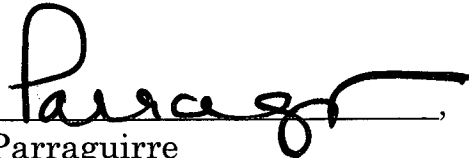
The United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime. Harmelin v.

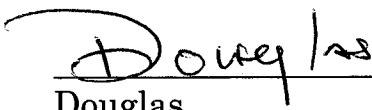
Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court's discretion, however, is not limitless. Parrish v. State, 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).


Jack 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 213.1243(8) (violation of the terms of sex offender lifetime supervision carries a prison term of not less than one year and not more than six years). Jack did not dispute the contents or recommendations of the presentence investigation report, and he acknowledged that he was unwilling to meet the terms of his lifetime supervision and asked to be returned to prison. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Humboldt County District Attorney
Humboldt County Clerk