IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN PAUL HONAKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53336

FILED

JUL 29 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 a guilty plea, of one count of sexually motivated coercion.[1] Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Bryan Paul Honaker to serve a prison term of 24-60 months.

Honaker contends that the district court abused its discretion by imposing a sentence disproportionate to the crime, thus 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. In support of his argument, Honaker notes that he "immediately took responsibility for his crime and pled guilty." We disagree with Honaker's contention.

[1]Honaker was initially charged by way of a criminal complaint with two counts each of open or gross lewdness, sexual assault, and attempted sexual assault.

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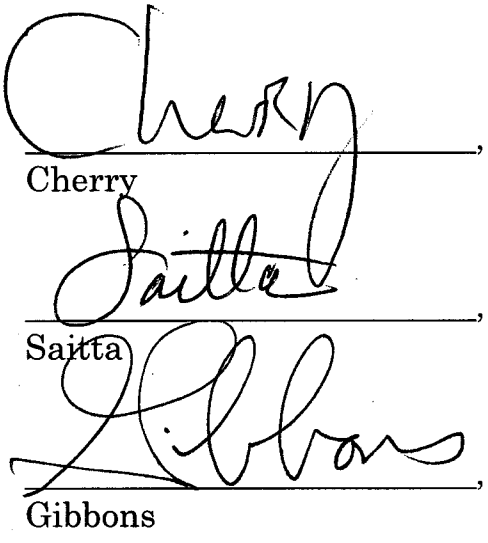
The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion). This court has consistently 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), limited on other grounds by Knipes v. State, 124 Nev. ___, 192 P.3d 1178 (2008).

In the instant case, Honaker 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 207.190(2)(a) (category B felony punishable by a prison term of 1-6 years). At the sentencing hearing, the victim and his father provided impact statements. The victim's father informed the court that

since the incident, his son remained "fearful of activities or interactions with strangers."[2] We also note that it is within the district court's discretion to impose probation. See NRS 176A.100(1)(c). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Donald M. Mosley, 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

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[2]The victim's father described his son as having been "tested" and "labeled" by the State of Nevada as "mildly mentally retarded" since birth.