IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TROY NEWTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53479

FILED

SEP 23 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 battery causing substantial bodily harm. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge. The district court sentenced appellant, Michael Troy Newton, to serve a prison term of 24 to 60 months.[1]

Newton contends that the district court abused its discretion at sentencing. Specifically, Newton asserts that the district court relied on impalpable evidence because it "fail[ed] to take into consideration the statements of an imperfect self-defense." Paradoxically, Newton also

[1]Although this court has elected to file the fast track statement submitted by Newton, we note that it fails to comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e). Specifically, Newton improperly submitted two documents—a "fast track statement" and "appellant's opening brief"—and failed to follow the formatting required by NRAP Form 6. Counsel for Newton is cautioned that failure to comply with the requirements for fast track statements in the future may result in documents being returned, unfiled, to be correctly prepared, and may also result in the imposition of sanctions by this court. NRAP 3C(n).

argues that the district court considered Newton's claim of imperfect self-defense "to be an aggravating factor warranting the imposition of the maximum sentence allowed by law." We conclude that Newton's contention lacks merit.

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). 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). "Further, a sentencing proceeding is not a second trial, and the court is privileged to consider facts and circumstances that would not be admissible at trial." Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). 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)).

Here, Newton's claim that the district court failed to consider his claim of imperfect self-defense is belied by the record. The district court specifically considered and rejected that claim as indicated by the statement: "This wasn't self-defense. This was a beating." Also, the record does not indicate that the district court relied on anything other than information contained within the presentence investigation report, pictures of the victim, the victim's medical records and the victim impact statements in making its sentencing determination. Finally, we note that

the sentence imposed was within the parameters provided by the relevant statutes. See NRS 200.481(2)(b); NRS 193.130(2)(c). Accordingly, we conclude that that the district court did not abuse its discretion in sentencing Newton, and we

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.

Douglas, J.

Pickering, J.

cc: Hon. Richard Wagner, District Judge
Pershing County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Pershing County District Attorney
Pershing County Clerk