

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON NEWMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53640

FILED

DEC 04 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of battery by a prisoner. Seventh Judicial District Court, White Pine County; Robert E. Estes, Judge. The district court adjudicated appellant Aaron Newmon a habitual criminal and sentenced him to serve a prison term of 5 to 20 years.

Sufficiency of the Evidence

Newmon contends that there was insufficient evidence to support his conviction because the State failed to prove beyond a reasonable doubt that he was not acting in self-defense when he battered the victim. However, our review of the record reveals sufficient evidence to establish Newmon's guilt beyond a reasonable doubt as determined by a rational trier of fact. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

In particular, we note that the jury was properly instructed on self-defense. A correctional officer testified that the victim was handcuffed and Newmon was not handcuffed. The correctional officer heard the victim cry for help, observed Newmon punching the victim, and saw the victim trying to block the punches with his body. A prison nurse testified

that that the victim had sustained a puncture wound to his jaw and that Newmon's hands were covered with blood. The parties stipulated that Newmon was in prison pursuant to a judgment of conviction at the time of the battery.

We conclude that a rational juror could infer from this evidence that Newmon was not acting in self-defense when he battered the victim. See NRS 200.481(1)(a), (2)(f). It is for the jury to determine the weight and credibility to give conflicting testimony. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). And the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. Id.

Cruel and Unusual Punishment

Newmon also contends that the district court abused its discretion at sentencing. Newmon claims that the sentence imposed as a result of his adjudication as a habitual criminal is cruel and unusual because it is disproportionate to his crime. Newmon analogizes his circumstances to those of the appellant in Naovarath v. State, 105 Nev. 525, 779 P.2d 944 (1989); maintains that his crime was nothing more than a minor fight between cellmates; and asserts that his crime would have been a misdemeanor had it not occurred in prison.

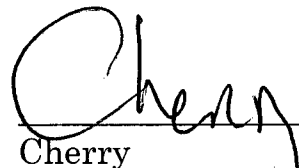
We have consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration 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). A sentence within the

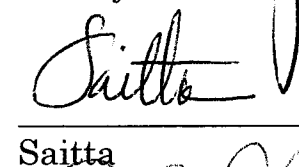
statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience. Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

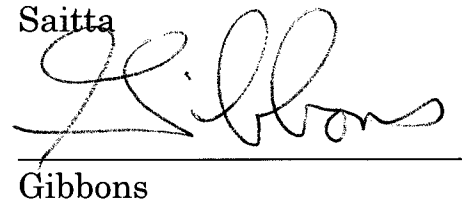
Here, the record reveals that the district court considered Newmon's criminal history, knew that habitual criminal adjudication was discretionary, and declined to exercise its discretion to dismiss the habitual criminal count. See O'Neill v. State, 123 Nev. 9, 16-17, 153 P.3d 38, 43 (2007). Newmon has not alleged that the district court relied on impalpable or highly suspect evidence, nor has he alleged that the relevant statute is unconstitutional. We note that the sentence imposed falls within the parameters provided by the relevant statute, see NRS 207.010(1)(a), and we conclude that Newmon's sentence does not constitute cruel and unusual punishment.

Having considered Newmon's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Third Judicial District Court Dept. 3, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk