


IN THE SUPREME COURT OF THE STATE OF NEVADA

KYLE TYLER DOMINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53664

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 a guilty plea, of one count of assault with a deadly weapon and one count of robbery. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. The district court sentenced appellant Kyle Tyler Domina to serve a prison term of 28 to 72 months for the assault with a deadly weapon, and a prison term of 72 to 180 months for the robbery, to be served consecutively to each other and to the sentence in district court case no. C222305.

Domina's sole contention on appeal is that the district court abused its discretion at sentencing. Specifically, Domina asserts that his sentence constitutes cruel and unusual punishment because the sentence imposed is longer than the sentence recommended by the Division of Parole and Probation and the sentence requested by the State. Domina also asserts that his sentence is cruel and unusual because it is considerably longer than the sentence imposed on his codefendant. We disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659,

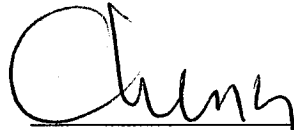
664, 747 P.2d 1376, 1379 (1987). We will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The district court has discretion to impose sentences to run either concurrently or consecutively. NRS 176.035(1). 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)). And, no rule of law requires the district court to sentence codefendants to identical punishments. Nobles v. Warden, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990).


Here, Domina has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, the sentence imposed is within the parameters provided by the relevant statutes. See NRS 200.380(2); NRS 200.471(2)(b). We note that although Domina’s sentence is longer than the sentence requested by the State,¹ Domina was informed in the written guilty plea agreement that the district court had discretion to order any

¹The record indicates that the Division of Parole and Probation recommended a sentence of 28 to 72 months for the assault with a deadly weapon and 72 to 180 months for the robbery, but it is unclear whether it recommended that the terms run concurrently or consecutively. Thus, it is unclear whether the sentence imposed is longer than the sentence recommended by the Division, as contended.

sentences to run concurrently or consecutively and that the court was not obligated to accept the sentencing recommendation made by the State. Accordingly, we conclude that the district court did not abuse its discretion in sentencing Domina, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Bellon & Maningo, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk