IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR CRAIG FOREST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53679

FILED

DEC 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of attempted sexual assault. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Arthur Craig Forest to serve a prison term of 96 to 240 months.

Forest contends that the district court abused its discretion at sentencing by relying on impalpable and highly suspect information. Specifically, Forest objects to several comments made by the victim's case manager during sentencing including statements that: (1) Forest was a high risk to reoffend, (2) Forest was a predator who used grooming techniques to prey on victims, (3) inferred Forest's friends and family were harassing the victim's friends and family, and (4) insinuated Forest victimized other disabled persons. We disagree.

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). A sentencing judge has discretion to consider a "wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but the individual defendant."

Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). Accordingly, this court 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).

Here, the district court considered the case manager's statements to be opinions rather than statements of fact and informed the case manager that the contact that occurred between Forest and the victim's friends and family was not improper. We conclude that the district court did not abuse its discretion by allowing the case manager to express her opinion. Cf. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (holding that "[t]he district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision").

Even assuming that the case manager's comments were improper, Forest has failed to demonstrate that the district court relied on the comments in determining Forest's sentence. We note that the district court also heard argument from both counsel; testimony from two of Forest's cousins on his behalf; the victim's written statement, which was read by the case manager; and Forest's statement in allocution. The court also had before it several letters from Forest's family and friends, as well as the presentence investigation report and two psychosexual evaluations. Accordingly, we conclude that this contention is without merit.

To the extent Forest asserts that the case manager was barred, pursuant to NRS 176.015, from making any statement because she was not a victim or a relative of a victim, this assertion is without merit.

See Wood v. State, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995) (holding that NRS 176.015 does not restrict the sentencing judge's discretion to consider statements by persons not defined by that statute).

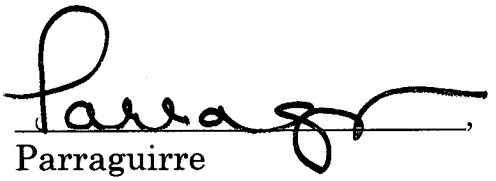
Forest also contends that the sentence imposed constitutes cruel and unusual punishment because it was so disproportionate to the crime as to shock the conscience.

The Eighth Amendment 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). Regardless of its severity, 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)).

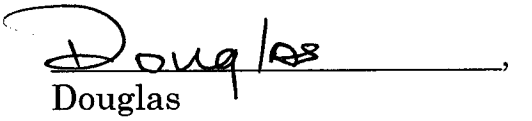
In the instant case, Forest does not allege that the relevant statutes are unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statutes, see NRS 193.330(1)(a)(1); NRS 200.366(1), and is not so unreasonably disproportionate to the crime as to shock the conscience. Finally, we note that the sentence imposed was in accord with the recommendation made by the Division of Parole and Probation. Accordingly, we conclude that the sentence imposed is not so unreasonably disproportionate to the offense as to shock the conscience and does not constitute cruel and unusual punishment.

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

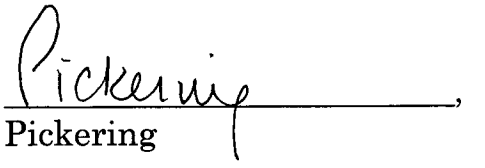
ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk