IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON JAY ANDERSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34911

FILED

DEC 27 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of grand larceny. The district court sentenced appellant to serve twelve (12) to forty-eight (48) months in prison, to be served consecutively to any other sentence being served by appellant.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.[1] In particular, appellant contends that the sentence is disproportionate considering his attempts to change his life and his limited criminal history. Appellant also argues that the district court abused its discretion by ordering that the sentence be served consecutively to any prior convictions. We disagree.

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

[1]Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

99-13207

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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). 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).

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes. See NRS 205.222(2) (grand larceny of property with value less than $2,500 is category C felony); NRS 193.130(2)(c) (punishment for category C felony is imprisonment for minimum term of not less than 1 year and maximum term of not more than 5 years). Moreover, it is within the district court's discretion to impose consecutive sentences.[2] See NRS 176.035(1); Warden v.

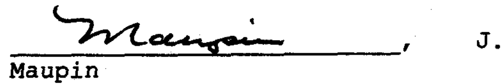
[2]We note that in its fast track response, the state indicates that the district court was required to impose consecutive sentences in this case pursuant to NRS 176.035(2). That statute, however, is not applicable here because appellant did not commit the instant felony while under sentence of imprisonment for committing a prior felony. It does not appear that the district court relied on NRS 176.035(2) in imposing consecutive sentences.

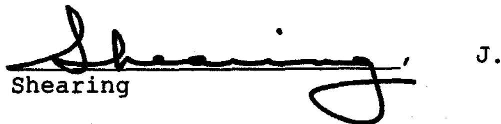
(O)-4892

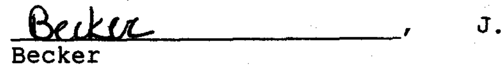
Peters, 83 Nev. 298, 429 P.2d 549 (1967). We conclude that the sentence imposed is not so unreasonably disproportionate to the offense as to shock the conscience and, therefore, the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER this appeal dismissed.


_______________, J.
Maupin


_______________, J.
Shearing


_______________, J.
Becker

cc: Hon. J. Michael Memeo, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk

(O)-4892