IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRAD JACKSON HENKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54242

FILED

NOV 12 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a no contest plea, of one count of driving under the influence of alcohol and/or controlled or prohibited substance causing substantial bodily harm. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant to serve a prison term of 48 to 144 months.

Appellant claims that his sentence is unfairly harsh and constitutes cruel and unusual punishment because the injuries sustained by his friend did not leave his friend permanently disabled.[1] We conclude this claim lacks merit.

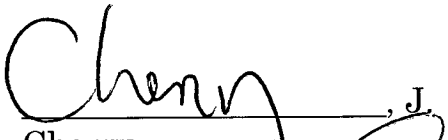
The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but

[1]The fast track statement is not in the form required by Nevada Rule of Appellate Procedure 3C(e) and NRAP Form 6. Nevertheless, we have elected to file the fast track statement. We caution appellant's counsel that, in the future, submitting fast track statements for filing with this court that are not in the required form could result in this court returning the document to counsel to be correctly prepared.

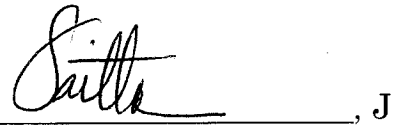
forbids only an extreme sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court's discretion, however, is not limitless. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Nevertheless, 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). Despite its severity, 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 to the crime as to shock the conscience. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

Here, appellant does not allege that the relevant sentencing statute is unconstitutional or that the district court relied on impalpable or highly suspect evidence. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute. See NRS 484.3795(1)(f). Therefore, we conclude that the district court did not abuse its discretion at sentencing, and we

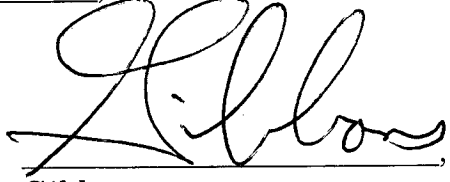
ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Catherine Cortez Masto/Carson City
Eureka County District Attorney
Eureka County Clerk