

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY VINCENT ABEYTA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55367

FILED

NOV 05 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Anthony Vincent Abeyta contends that the district court abused its discretion by imposing an excessive sentence constituting cruel and unusual punishment based on highly suspect evidence and the mention of a prior bad act during the victim's impact statement. See U.S. Const. amend. VIII. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Abeyta has not demonstrated that the district court relied solely on impalpable or highly suspect evidence or alleged that the relevant sentencing statutes are unconstitutional. See Denson v. State, 112 Nev. 489, 492-93, 915 P.2d 284, 286-87 (1996); see also Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). Abeyta's sentence of two consecutive prison terms of 60-240 months falls within the parameters provided by the relevant statutes, NRS 200.030; NRS 193.330(1)(a)(1); NRS 193.165(1), and the sentence is not "so unreasonably disproportionate to the offense as to shock the conscience," Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979);

Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). And when the victim referred to a prior bad act committed by Abeyta, defense counsel objected and the district court immediately admonished the victim, instructing him to only discuss how the incident impacted his life. The victim made no further reference to any prior bad act and, considering his extensive criminal history, Abeyta has failed to demonstrate that the district court based its sentencing decision on the victim's unsworn comment. See Randell, 109 Nev. at 7-8, 846 P.2d at 280 (“[J]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence.” (quoting People v. Mockel, 276 Cal. Rptr. 559, 563 (Ct. App. 1990))). Therefore, we conclude that the district court did not abuse its discretion at sentencing and the sentence imposed does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Attorney General/Carson City
Clark County District Attorney
The Law Office of Dan M. Winder, P.C.
Eighth District Court Clerk