


IN THE SUPREME COURT OF THE STATE OF NEVADA

AUSTIN VON BOWDISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55443

FILED

NOV 10 2010

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 robbery. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

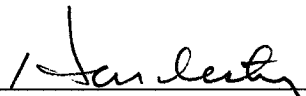
First, appellant Austin Bowdish contends that his guilty plea is invalid because the State failed to timely file an information, pursuant to NRS 173.035(4), containing only the offense to which he agreed to plead guilty. See O'Guinn v. State, 118 Nev. 849, 851, 59 P.3d 488, 489-90 (2002) (this court may consider a challenge to the validity of a guilty plea on direct appeal if the challenge relies on legal rather than factual assertions). This claim lacks merit. NRS 173.035(4) applies only to matters where a defendant has waived his right to a preliminary hearing. Bowdish did not waive his right to a preliminary hearing. Therefore, NRS 173.035(4) is inapplicable to this case and Bowdish has failed to demonstrate any error.

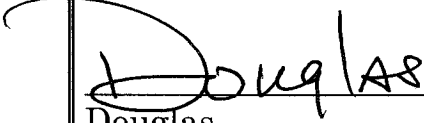
Second, Bowdish contends that the procedural protections applicable when a victim testifies regarding the prior bad acts of a defendant at sentencing should be extended to include situations where a prosecutor makes allegations regarding a defendant's prior bad acts at


sentencing. See Buschauer v. State, 106 Nev. 890, 894, 804 P.2d 1046, 1049 (1990). We decline to extend Buschauer at this time.

Third, Bowdish asserts that his sentence constitutes cruel and unusual punishment because it was imposed to run consecutive to the sentences in two other cases. See Nev. Const. art. 1, § 6. We disagree. The 60- to 156-month sentence imposed was within the statutory limits, see NRS 207.010(1)(a), and is not so disproportionate to the crime as to shock the conscience. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). Bowdish does not assert that the relevant statute is unconstitutional. Further, even if the State was improperly permitted to inform the court of Bowdish's status as a suspect during argument, we conclude that he has failed to demonstrate that the district court relied solely on this statement when imposing Bowdish's sentence, see Denson v. State, 112 Nev. 489, 493, 915 P.2d 284, 287 (1996). Therefore, we conclude that the sentence imposed does not constitute cruel and unusual punishment and the district court did not abuse its discretion in imposing Bowdish's sentence. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
Eighth District Court Clerk
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender