

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL KENNETH HEATH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55990

FILED

NOV 05 2010

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 guilty plea, of driving under the influence of intoxicating liquor with a prior felony conviction for driving under the influence. Third Judicial District Court, Churchill County; Leon Aberasturi, Judge.

Appellant Paul Heath, Jr., contends that the sentence imposed constitutes cruel and unusual punishment because he is an alcoholic; alcoholism is a disease; and, like juveniles and the mentally challenged, alcoholics should not be subject to the same punishment as other repeat offenders because of their diminished sophistication, capacity, and sense of responsibility. See Roper v. Simmons, 543 U.S. 551, 569-75 (2005); Atkins v. Virginia, 536 U.S. 304, 318-21 (2002).

We disagree with Heath's contention that sentencing alcoholics to the same punishment as non-alcoholic offenders constitutes cruel and unusual punishment because we conclude that such a practice does not offend the "evolving standards of decency" of our society. See, e.g., Roper, 543 U.S. at 560-61. Further, the 62- to 156-month sentence is within the statutory limits, see NRS 484C.110(1); NRS 484C.400(1)(c); NRS 484C.410(1)(a), and is not so "disproportionate to the crime as to

shock the conscience,” Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). Heath does not assert that the relevant statutes are unconstitutional, id., or that the district court relied on impalpable or highly suspect evidence, Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment and the district court did not abuse its discretion in imposing Heath’s sentence, see Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Leon Aberasturi, District Judge
Attorney General/Carson City
Churchill County District Attorney
Law Offices of Robert Witek
Churchill County Clerk