IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY EDWIN THRASHER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35169

FILED

JAN 16 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of principal to first-degree murder. The district court sentenced appellant to serve life in prison without the possibility of parole.[1]

Appellant contends that the sentence imposed constitutes cruel or unusual punishment in violation of the Nevada Constitution.[2] In particular, appellant argues that NRS 213.085 renders a sentence of life in prison without the possibility of parole cruel or unusual because it denies appellant the opportunity for executive clemency.[3] We disagree.

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

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[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

[2]The Nevada Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted . . . ." Nev. Const. art 1, § 6.

[3]NRS 213.085(1) provides that where a person is convicted of first-degree murder on or after July 1, 1995, the Board of Pardons Commissioners "shall not commute" a sentence of death or life in prison without the possibility of parole "to a sentence that would allow parole."

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). Regardless of its severity, a sentence 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).

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statute. See NRS 200.030(4). Finally, we conclude that NRS 213.085 does not violate Nevada's cruel or unusual punishment clause. See Colwell v. State, 112 Nev. 807, 812, 919 P.2d 403, 406-07 (1996) (rejecting claim that "NRS 213.085 renders Nevada's death penalty scheme unconstitutional by completely denying [a convicted defendant] a chance for clemency" because while the statute "modifies and limits power of commutation" it does not address the pardon power and, therefore "does not completely deny the opportunity for 'clemency'").[4] Accordingly, we

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[4]Appellant argues that the availability of a pardon is only a "paper" remedy as "anyone would be hard pressed to remember the last time the Pardon's Board granted a full pardon to someone sentenced to life without parole." Appellant therefore argues that the continuing availability of the pardon power "should not be the basis of finding a punishment constitutional." We disagree.

conclude that the sentence imposed does not constitute cruel or unusual punishment.

Having considered appellant's contention and concluded that it is without merit, we affirm the judgment of conviction.

It is so ORDERED.

Young, J.

Rose, J.

Becker, J.

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
State Public Defender
Carson City Clerk