IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID A. ROHDE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35485

FILED

JUL 24 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of transporting a controlled substance and conspiracy to commit the crime of fraudulent use of a credit card. The district court sentenced appellant to 24 to 60 months in prison for the transporting conviction and a concurrent 12 months in prison for the conspiracy conviction.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.[1] Appellant also contends that the sentence is not reliable because the presentence investigation report contained numerous prejudicial errors that "poisoned the sentencing process."[2] We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the

[1]Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

[2]Relevant to his criminal history, appellant informed the district court that he only had two, not four, prior felony convictions and that the Governor of Wyoming had granted him a pardon with respect to a prior conviction for forgery.

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crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). 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).

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 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).

In the instant case, appellant does not allege that the relevant statutes are unconstitutional. Moreover, our review of the record indicates that the district court took into consideration appellant's corrections to the presentence investigation report and thus, it does not appear that appellant was prejudiced by reliance on impalpable or highly suspect evidence.[3] Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.

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[3]We note that the district court expressly stated that based on the documents provided by the Division of Parole and Probation, it was not entirely clear whether appellant had two or four prior felony convictions, but that because "the court is not certain, the court would have to let the scales tip in favor of the defendant." We further note that the presentence investigation report indicates that appellant has 23 prior misdemeanor convictions, many of which evidence appellant's continuing problems with controlled substances.

See NRS 453.321(2)(a) (providing for sentence of 1 to 6 years for first offense of transporting a controlled substance); NRS 199.480(3) (providing that conspiracy constitutes gross misdemeanor); NRS 193.140 (providing for sentence of not more than one year for gross misdemeanor). Finally, we conclude that the sentence imposed is not so unreasonably disproportionate to the offenses as to shock the conscience. Accordingly, we conclude that the district court did not rely on impalpable or highly suspect evidence and that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General
Humboldt County District Attorney
State Public Defender
Humboldt County Clerk