IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNIE GEORGE AKA PETE GEORGE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35629

FILED

JAN 30 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 one count of second-degree murder. The district court sentenced appellant to life imprisonment, with parole eligibility after ten years.

Appellant Ronnie George raises two issues on appeal. First, George contends that substantial evidence does not exist to support the district court's finding that he was competent to plead guilty to second-degree murder and to be sentenced. Second, George contends that the district court abused its discretion in sentencing him to life imprisonment, with parole eligibility after ten years, because it violates the proscription against cruel and unusual punishment contained in the United States and Nevada Constitutions. We conclude that George's contentions lack merit and, accordingly, affirm the judgment of conviction and sentence.

Initially, George asserts that because he demonstrated an inability to comprehend the proceedings and an inability to reasonably assist his counsel, he was not competent to plead guilty to second-degree murder and to be sentenced. We disagree.

Under NRS 178.400(1), a defendant may not be tried or adjudged to punishment while he is not competent. The test for determining if a defendant is competent is set forth at NRS 178.400(2). Specifically, NRS 178.400(2) states that a

defendant is "incompetent" if he "is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter." Competency is a judicial determination, made after a competency hearing. See Tanksley v. State, 113 Nev. 844, 847, 944 P.2d 240, 242 (1997); NRS 178.415.[1] A district court's findings will be sustained on appeal when substantial evidence exists to support them. See Calambro v. District Court, 114 Nev. 961, 971, 964 P.2d 794, 800 (1998).

We conclude that substantial evidence exists to support the district court's finding that George was competent to plead guilty to second-degree murder and to be sentenced. Pursuant to NRS 178.415(1), the district court appointed one psychiatrist and one psychologist to evaluate George. Further, in accordance with NRS 178.415(2), a competency hearing was held and both sides were afforded the opportunity to examine the persons appointed to evaluate George. Moreover, the persons appointed to evaluate George testified that George possessed the ability to understand the nature of

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[1]NRS 178.415 provides as follows:

> 1. Except as otherwise provided in this subsection, the court shall appoint two psychiatrists, two psychologists, or one psychiatrist and one psychologist, to examine the defendant. . . .
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> 2. At a hearing in open court, the judge shall receive the report of the examination and shall permit counsel for both sides to examine the person or persons appointed to examine the defendant. The prosecuting attorney and the defendant may introduce other evidence and cross-examine one another's witnesses.
>
> 3. The court shall then make and enter its finding of competence or incompetence.

the criminal charges against him and was competent to aid and assist his counsel in preparing his defense.

Additionally, throughout the proceedings, George was able to intelligently respond to questioning by the district court. Further, George was able to effectively communicate his concerns regarding his legal representation, the plea agreement and sentencing. Accordingly, we conclude that George had "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and that he had a rational as well as factual understanding of the proceedings against him. Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991). Therefore, substantial evidence exists to support the district court's finding that George was competent to plead guilty to second-degree murder and to be sentenced.

As to George's second contention, George argues that the district court's imposition of a life sentence, with parole eligibility after ten years, constitutes cruel and unusual punishment prohibited by the Eighth Amendment of the United States Constitution and Article 1, Section 6 of the Nevada Constitution. We disagree.

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment. See also Nev. Const. art. 1, § 6. But the Eighth Amendment does not require strict proportionality between crime and sentence; it only forbids an extreme sentence that is grossly disproportionate to the 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, 348-49, 871 P.2d 950, 953 (1994).

We conclude that the penalty imposed on George does not constitute cruel and unusual punishment. First, George's sentence of life imprisonment, with parole eligibility after ten years, is within the statutory limits of NRS 200.030(5).[2] Second, the sentence is neither extreme nor grossly disproportionate to the crime committed. Accordingly, the district court did not abuse its discretion in sentencing George to life imprisonment, with parole eligibility after ten years.

Having considered George's contentions on appeal and concluded that they lack merit, we

ORDER the judgment of conviction and sentence affirmed.

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Leavitt

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[2]NRS 200.030(5) states as follows:

> A person convicted of murder of the second degree is guilty of a category A felony and shall be punished by imprisonment in the state prison:
>
> (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or
>
> (b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

cc: Hon. Richard Wagner, District Judge
Attorney General
State Public Defender
Pershing County District Attorney
Pershing County Clerk