IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY WAYNE WHITE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35663

FILED

JUL 05 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to 60-240 months in prison.

Appellant contends that the district court abused its discretion by finding appellant to be a habitual criminal where all of appellant's prior convictions were for non-violent thefts. We disagree.

The district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or justice. See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990). The habitual criminal statute, however, makes no special allowance for non-violent crimes or for the remoteness of the prior convictions; these are merely considerations within the discretion of the district court. See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). We conclude that, in light of appellant's numerous prior felony convictions and career of criminal activity, the district court did not abuse its discretion in adjudicating appellant as a habitual criminal. See Tillema v. State, 112

Nev. 266, 271, 914 P.2d 605, 608 (1996); Arajakis, 108 Nev. at 984, 843 P.2d at 805.

Appellant also 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] 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 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 district court relied on impalpable or highly suspect

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

evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes. See NRS 207.010(1)(a). Accordingly, we conclude 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.

_____, J.
Maupin

_____, J.
Shearing

_____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk