IN THE SUPREME COURT OF THE STATE OF NEVADA

KAMARIO SMITH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35798

FILED

AUG 18 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 nolo contendere plea,[1] of one count each of attempted robbery and carrying a concealed weapon. The district court sentenced appellant to serve 12 to 48 months in prison for attempted robbery and one year in jail for carrying a concealed weapon. The court ordered that the sentences be served concurrently.

Appellant contends that the sentence imposed by the district court was inappropriately biased and unreasonably disproportionate to the crimes committed. We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only

[1]Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

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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 relevant statutes are unconstitutional. Moreover, our review of the record demonstrates that the district court did not base its sentencing decision on an unsubstantiated belief that appellant was a gang member. Taken in context, the district court's comment does not appear to be an indication that the court believed appellant was a gang member.

Additionally, the sentence imposed was within the parameters provided by the relevant statutes. See NRS 202.350(3)(a); NRS 200.380; NRS 193.140; NRS 193.330(1)(a)(2). Further, we conclude that the sentence imposed is not so unreasonably disproportionate to the offenses committed as to shock the conscience. Accordingly, we conclude that appellant's contentions lack merit and we

ORDER this appeal dismissed.

Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk