IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIP SCOTT LADER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35936

FILED

JUL 26 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 jury verdict, of one count of driving under the influence with two or more convictions within the last seven years. The district court adjudicated appellant a habitual criminal and sentenced him to serve 96-240 months in prison.

Appellant first contends that the district court abused its discretion at sentencing because the district court believed it "had to" adjudicate appellant a habitual criminal We disagree.

The district court adjudicated appellant a habitual criminal after reviewing the presentence investigation report and listening to lengthy arguments from the state and counsel for appellant. It is reasonable to assume that the district court considered the arguments and report, and concluded that adjudication of appellant as a habitual criminal was just and proper. Cf. Clark v. State, 109 Nev. 426, 851 P.2d 426 (1993) (district court erred by adjudicating defendant a habitual criminal where it appeared that district court thought imposition of enhancement was mandatory, and district court therefore did not exercise any discretion in making the ruling).

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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 evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the

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

parameters provided by the relevant statute. 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.

Young, J.
Young

Agosti, J.
Agosti

Leavitt, J.
Leavitt

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk