

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MERLE LARRABEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36024

**FILED**

JUL 26 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of drawing and passing a check without sufficient funds. The district court sentenced appellant to serve 12 to 34 months in prison and ordered appellant to pay \$6,966.67 in restitution.

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.<sup>1</sup> 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

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<sup>1</sup>Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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 statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes. See NRS 205.130 (issuance of check or draft without sufficient funds is category D felony); NRS 193.130 (sentence for category D felony is prison term of 1 to 4 years). Moreover, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. Accordingly, we

conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contention and concluded that it is without merit, we

ORDER this appeal dismissed.

Young J.  
Young

Agosti J.  
Agosti

Leavitt J.  
Leavitt

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk