IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT D. HAIN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36027

FILED

SEP 19 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 failure to stop on signal of a peace officer.[1] The district court adjudicated appellant a habitual criminal and sentenced him to 5-20 years in the Nevada State Prison, to run consecutively to a previous sentence.

First, appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions[2] because the sentence is disproportionate to the crime.[3] 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

[1]See NRS 484.348(3)(b).

[2]See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

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

00-16525

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 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.

Second, appellant contends the district court erred in denying his motion in limine. More specifically, appellant contends the highly prejudicial nature of his previous felony convictions required their exclusion, rather than admission for impeachment purposes, if he decided to testify. See NRS 48.035(1). The State argues, however, that this issue was not preserved for appeal and is moot because appellant did not testify at trial.

We conclude that appellant failed to preserve this issue for appellate review. This court has held that "[a] ruling on a motion in limine is advisory, not conclusive;

after denial of a pretrial motion to exclude evidence, a party must object at the time the evidence is sought to be introduced in order to preserve the objection for appellate review." Staude v. State, 112 Nev. 1, 5, 908 P.2d 1373, 1376 (1996) (citing Teegarden v. State, 563 P.2d 660, 662 (Okla. Crim. App. 1977)). Furthermore, "to raise and preserve for review the claim of improper impeachment with a prior conviction, a defendant must testify." Luce v. United States, 469 U.S. 38, 43 (1984). In this case, appellant did not testify; therefore, any potential harm arising from the denial of appellant's motion in limine is speculative.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER this appeal dismissed.

Young, J.
Young

Maupin, J.
Maupin

Becker, J.
Becker

cc: Hon. Jack Lehman, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk