

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 36037

GARI NORMAN MCGRAW,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

JUL 26 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant to 24-84 months in the Nevada State Prison. The district court further ordered appellant to pay a fine in the amount of \$10,000.00.

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. 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,

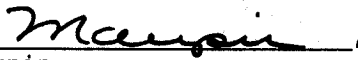
221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

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. Further, we note that the sentence imposed was within the parameters provided by the relevant statute. See NRS 453.3385(2). Moreover, the sentence is not so severe as to shock the conscience. See Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 743 (1978). 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.

  
Maupin J.

  
Shearing J.

  
Becker J.

cc: Hon. Jack B. Ames, District Judge  
Attorney General  
Elko County District Attorney  
Lockie & Macfarlan, Ltd.  
Elko County Clerk