


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY ROBERT PHELPS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66576

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving and/or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor resulting in death and driving and/or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant Jeffrey Phelps claims that the district court abused its discretion at sentencing. Specifically, Phelps asserts that the district court relied on suspect evidence when it erroneously compared his case to that of an unrelated defendant.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will refrain from interfering with the sentence imposed by the district court “[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).

15-900409

Here, Phelps, while driving under the influence of alcohol, rear-ended one vehicle, then swerved into oncoming traffic and hit another vehicle head on, killing one individual and substantially injuring two others. The district court imposed a term of 6 to 15 years for DUI causing death and a consecutive term of 5 to 15 years for DUI causing substantial bodily harm. Although, at sentencing, the district court compared the Division of Parole and Probation's sentencing recommendation for Phelps to the Division's sentencing recommendation in an unrelated case, the record does not demonstrate that the district court relied on any disparity in the recommendations when imposing sentence. Instead, the record reveals that the district court rejected the Division's sentencing recommendation and imposed sentence based on the facts of this case and the harm caused. Therefore, we conclude that the district court did not abuse its discretion when imposing sentence.


Next, Phelps claims that his sentences constitute cruel and unusual punishment. He asserts that the length of his sentences and the imposition of consecutive sentences are out of proportion to the severity of the crime. He further asserts that when pronouncing sentence the district court failed to adequately balance the specific nature and circumstances of the offense with his history and characteristics. Phelps notes that he took responsibility for his actions and, prior to the instant event, he had virtually no criminal history, had lived a good life, worked hard, and had family support.

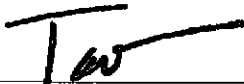
Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v.*


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 *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining that the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The sentence imposed is within the parameters provided by the relevant statute, see NRS 484C.430(1), and Phelps does not allege that the statute is unconstitutional. We are not convinced that the sentence imposed is so grossly disproportionate to the crime as to constitute cruel and unusual punishment.

Having concluded that Phelps's claims lack merit, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kenneth C. Cory, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk