IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN PEDRO LAPEIRE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36149

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 guilty plea, of one count each of using and/or being under the influence of a controlled substance and injury to or destruction of property. The district court sentenced appellant to serve 12 to 48 months in prison for using and/or being under the influence of a controlled substance and to serve a concurrent term of 1 year in jail for injury to or destruction of property. The court then suspended the prison term and placed appellant on probation for 2 years.

Appellant contends that the 1-year sentence for injury to or destruction of property constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime. In particular, appellant argues that the sentence is grossly out of proportion to the severity of the crime because it involved a non-violent, property offense. We disagree.

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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 statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes. See NRS

206.310; NRS 193.155(2); NRS 193.140. Moreover, we conclude that the sentence imposed 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.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. J. Michael Memeo, District Judge
Attorney General
Elko County District Attorney
Lockie & Macfarlan, Ltd.
Elko County Clerk