IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY HARVEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36424

FILED

MAY 18 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of second degree kidnapping. The district court sentenced appellant to serve 24 to 84 months in the Nevada State Prison and to pay a $2,000.00 fine.

The State charged appellant with one count each of sexual assault with the use of a deadly weapon and first degree kidnapping with the use of a deadly weapon. The State alleged that, using a knife, the defendant forcibly took the victim (appellant's wife) from her home to a remote location near Battle Mountain hill, where appellant held a knife to the victim's throat, threatened to kill the victim, and sodomized the victim. Pursuant to a plea agreement, appellant agreed to plead guilty to second degree kidnapping and, in exchange, the State agreed to dismiss the original charges. The parties remained free to argue for an appropriate sentence; however, the plea agreement provided that neither party would request probation. The district court accepted the guilty plea.

Appellant first contends that the sentence constitutes cruel and unusual punishment in violation of the United States Constitution because the sentence is disproportionate to the crime.[1] In particular, appellant

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

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argues that the sentence is excessive given his age and lack of criminal history. 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.[2] 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.'"[3]

Moreover, this court has consistently afforded the district court wide discretion in its sentencing decision.[4] Accordingly, we 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."[5]

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.[6] Finally, we conclude that the sentence imposed is not so grossly

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[2]Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion).

[3]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, 222 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[4]See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

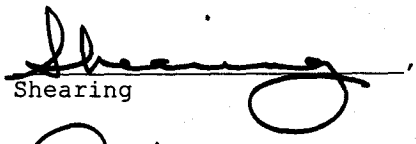
[6]See NRS 200.330 (providing that second degree kidnapping shall be punished by prison term of 2 to 15 years and fine of not more than $15,000.00).

disproportionate to the offense as to shock the conscience. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Next, appellant contends that his guilty plea was not knowingly and intelligently entered. We conclude that this issue is not appropriate for review on direct appeal. This court does not allow "a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction."[7] Such challenges must be raised "in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."[8] Because this issue has not been raised in the district court, we decline to reach it at this time.

Having considered appellant's contentions and concluded that they are either without merit or are not appropriate for review on direct appeal, we

ORDER the judgment of the district court AFFIRMED.



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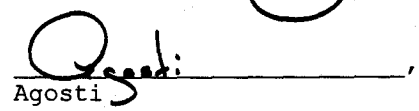

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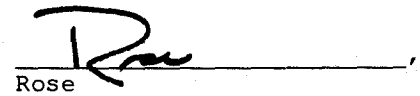

_____, J.
Rose

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General
Lander County District Attorney
Ted C. Herrera
Lander County Clerk

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[7]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

[8]Id. at 272, 721 P.2d at 368.