IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER EUGENE HEE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36740

FILED

JUN 05 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 one count of battery with intent to commit sexual assault causing substantial bodily harm. The district court sentenced appellant to life in prison without the possibility of parole. The district court further ordered that appellant be subject to lifetime supervision pursuant to NRS 176.0931.

Appellant contends that the district court abused its discretion in sentencing because it did not "fully understand the ramifications of the sentence of life without the possibility of parole." Specifically, appellant argues that the district court could not have understood that it was sentencing appellant to a prison term for his natural life because it also sentenced appellant to lifetime supervision effective after his release from prison. Appellant's contention lacks merit.

Pursuant to the plain language of NRS 176.0931(1), the district court "shall" impose a special sentence of

lifetime supervision if a defendant is convicted of a sexual offense as defined in subsection 5(b) of the statute. "The special sentence of lifetime supervision commences after any period of probation or any term of imprisonment and any period of release on parole."[1] Imposition of the special sentence of lifetime supervision is not discretionary; rather, the district court is required by law to impose such a sentence in all cases where a defendant has been convicted of one of the enumerated sexual offenses.[2]

Here, because appellant was convicted of a sexual offense, the district court was required by statute to impose the sentence of lifetime supervision regardless of whether appellant was eligible for parole. Therefore, we cannot conclude that the district court did not understand the nature of the life sentence it imposed merely because it also imposed lifetime supervision, as imposition of the latter sentence was required by law.

Appellant next contends that his sentence constitutes cruel and unusual punishment in violation of the

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[1]NRS 176.0931(2).

[2]Arguably, the sentences of life without the possibility of parole and lifetime supervision are somewhat inconsistent in light of the fact that NRS 213.085(2) prohibits the pardons board from commuting a life sentence without the possibility of parole to one that would allow parole. However, NRS 176.0931 requires the imposition of lifetime supervision for all defendants convicted of one of the enumerated sexual offenses, without any exception for those defendants that are not parole eligible. The legislature must have therefore intended all sexual offenders to be subject to lifetime supervision regardless of sentence.

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.[3] 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.'"[4]

This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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."[6]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect

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[3]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

[4]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).

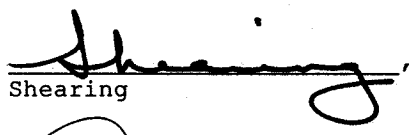
[5]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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

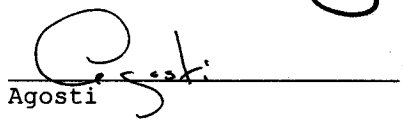
evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[7] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Shearing



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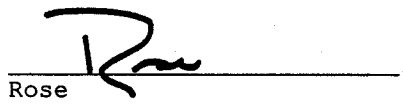

_____, J.
Rose

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

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[7]See 200.400(4)(a).