IN THE SUPREME COURT OF THE STATE OF NEVADA

SHOUMIN MARSHALL CHAI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36905

FILED

JUN 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 one count of attempted fraudulent use of a credit card. The district court sentenced appellant to twelve months in jail.

Appellant contends that the sentence violates her right to due process and constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is "vindictive" and disproportionate to the crime.[1] Particularly, appellant contends that the district court acted "vindictively" in refusing to grant her probation because she "was facing charges on another case in another district court" at the time of sentencing. We conclude that this contention wholly lacks merit.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only

[1]Appellant primarily relies on North Carolina v. Pearce, 395 U.S. 711, 724 (1969) and Alabama v. Smith, 490 U.S. 794 (1989). These cases discuss whether a sentence is vindictive in the context of resentencing after a reversal of a judgment of conviction, and are therefore inapposite to the present matter.

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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]

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] 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."[5]

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.[6] Moreover, the granting of probation is discretionary.[7] Accordingly, we

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[2]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (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, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[4]See 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 205.690(2); NRS 193.330 (1)(a)(5).

[7]See NRS 176A.100(1)(c).

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 the judgment of conviction AFFIRMED.[8]

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Pike & Draskovich
Clark County Clerk

[8]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.