

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN RUSSELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37021

**FILED**

APR 04 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction pursuant to a guilty plea of one count of sexual assault with a minor under 16 years of age, and one count of child abuse and neglect with substantial mental injury. The district court sentenced appellant to a prison term of 5 to 20 years for sexual assault and a consecutive prison term of 36 to 240 months for child abuse. The district court further sentenced appellant to a term of lifetime supervision.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime. Appellant primarily relies on Solem v. Helm.<sup>1</sup> 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.<sup>2</sup> Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is

<sup>1</sup>463 U.S. 277 (1983)

<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"<sup>3</sup>


This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> 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."<sup>5</sup>


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.<sup>6</sup> 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 the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

<sup>3</sup>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).

<sup>4</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>6</sup>See NRS 200.366(3)(b)(2); NRS 200.508(2)(b).

cc: Hon. Joseph T. Bonaventure, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk