

IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRY DODD JIM,

No. 37136

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 16 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,¹ of one count of attempted sexual assault. The district court sentenced appellant Harry Dodd Jim to serve a prison term of 72 to 180 months.

Jim's sole contention is that the district court abused its discretion at sentencing because it based its sentencing decision on highly suspect evidence contained in the victim impact statement and in the presentence investigation report. Specifically, Jim contends that the district court relied on impalpable allegations that Jim lacked remorse and posed a danger to society. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.² 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."³ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional,

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

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

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

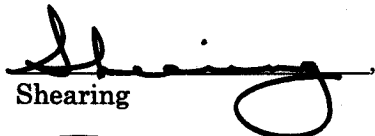
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and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

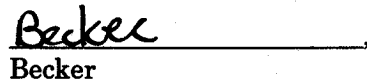
In the instant case, we note that Jim failed to object to the introduction of the allegedly suspect evidence at his sentencing hearing, thereby barring our review of this issue absent plain or constitutional error.⁵ Nonetheless, our review of the record reveals no indication that the district court based its sentencing decision on impalpable evidence.⁶ Moreover, in light of Jim's prior criminal history and the fact that his victim was mentally retarded and mentally ill, we disagree that the district court based its sentencing decision on statements about Jim's lack of remorse or future dangerousness. Further, we note that that Jim does not contend that the relevant statutes are unconstitutional and the sentence imposed was within the parameters provided by the relevant statutes.⁷

Having considered Jim's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing J.


Rose J.


Becker J.

⁴Blume 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)).

⁵See Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

⁶See Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 279 (1993) ("The district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision."); see also Brake v. State, 113 Nev. 579, 939 P.2d 1029 (1997); Brown v. State, 113 Nev. 275, 934 P.2d 235 (1997).

⁷See NRS 200.366(2) (providing that sexual assault is a category A felony); NRS 193.330(1)(a) (providing for a sentence of 2 to 20 years for an attempt to commit a category A felony).

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk