IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES EDGAR KIECHLER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37150

FILED

MAR 23 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 an Alford[1] plea, of attempted abuse of an older person. Appellant was accused of hitting, kicking, and dragging his 80-year-old mother. The district court sentenced appellant to 24 to 60 months in the Nevada State Prison.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.[2] Barring unconstitutionality under the Eighth Amendment, appellant contends that, at the very least, the sentence constitutes either cruel or unusual punishment under the more expansive Article 1 section 6 of the Nevada Constitution.[3] Appellant argues that the sentence is cruel or unusual because it is disproportionate to the crime and appellant is in his 60's and in poor health.[4] We disagree.

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[1]North Carolina v. Alford, 400 U.S. 25 (1970).

[2]"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII (emphasis added).

[3]"Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained." Nev. Const. art. 1, § 6 (emphasis added).

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

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.[5] 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.'"[6]

This court has consistently afforded the district court wide discretion in its sentencing decision.[7] 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."[8]

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. Although the district court had discretion to grant probation in this case,[9] there is nothing in the record to suggest that the district court abused its discretion in refusing to grant probation, particularly considering appellant's criminal

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

[6]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 Schmidt v. State, 94 Nev. 665, 669, 584 P.2d 695, 698 (1978) (holding that "a six-year sentence [for indecent or obscene exposure] does not constitute cruel or unusual punishment for it neither shocks the conscience nor is disproportionate to the offense involved" (emphasis added)).

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

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

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

history, which made him eligible for adjudication as a habitual criminal.[10] Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[11] Accordingly, we conclude that the sentence imposed does not constitute cruel or unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General
Humboldt County District Attorney
State Public Defender
Humboldt County Clerk

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[10]According to the pre-sentence investigation report, appellant had previously been convicted of three felonies in Nevada. The State did not seek habitual criminal status.

[11]See NRS 200.5099(1); NRS 193.330; NRS 193.130.