IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY JOE MOBLY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37622

FILED

AUG 24 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of three counts of sexual assault. The district court sentenced appellant to serve three consecutive terms of life in prison with the possibility of parole after 10 years. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant contends that the district court abused its discretion at sentencing by considering victim impact statements wherein the victims requested that the district court impose the maximum possible sentence. We disagree. Appellant waived this issue by failing to object below.[1] Moreover, this court has held that a victim may request that the district court impose a specific sentence in non-capital cases.[2] Appellant's contention therefore lacks merit.

Appellant also argues that the sentence imposed constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime. We disagree.

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[1]Smith v. State, 112 Nev. 871, 873, 920 P.2d 1002, 1002 (1996) (concluding that, by failing to object below, appellant waived contention that he was denied a fair sentencing hearing when victim asked court to impose maximum sentence).

[2]Randell v. State, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993).

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]

Further, this court has consistently afforded the district court wide discretion in its sentencing decision.[5] Accordingly, we 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 evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute,[7] and that the district court had discretion to impose consecutive

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

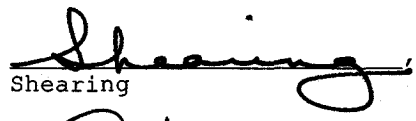
[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[7]See NRS 200.366(2)(b) (providing for sentence of life in prison with the possibility of parole after 10 years or a definite term of 25 years with parole eligibility after a minimum of 10 years).

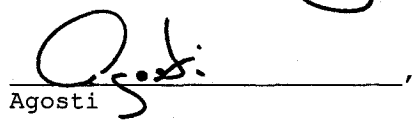
sentences.[8] Finally, considering the facts underlying the charges,[9] we conclude that the sentence imposed is not so grossly disproportionate to the offenses as to shock the conscience. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they lack merit, we

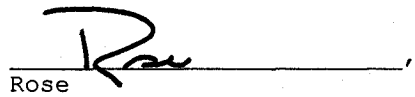
ORDER the judgment of conviction AFFIRMED.



Shearing, J.



Agosti, J.



Rose, J.

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

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[8]See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

[9]Appellant and an accomplice blindfolded, gagged and restrained one victim on her own bed, tossed her into the trunk of a car, threatened to kill her, and then transported her to a location where appellant raped her twice and his accomplice "physically assaulted" her. Approximately two months later, appellant attacked and sexually assaulted another woman. Appellant pleaded guilty in 1999, but absconded prior to sentencing and was not recaptured and sentenced until February 2001.