IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN GREEN A/K/A BRIAN LEE VAY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37633

FILED

JUN 13 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 unlawful use of a minor as the subject of a sexual portrayal. The district court sentenced appellant to serve 15 years in prison with the possibility of parole after 5 years. The district court also imposed a special sentence of lifetime supervision upon appellant's release from any term of imprisonment or parole.

Appellant first contends that the district court abused its discretion at sentencing by considering inappropriate evidence contained in the presentence report. Specifically, appellant contends that the victim information section of the report contained impalpable or highly suspect evidence.[1] We disagree. As an initial matter, we note that appellant failed to object to the allegedly impalpable or highly suspect evidence in the presentence report. Accordingly, we need not consider this contention because it was not properly preserved for review.[2] Nonetheless, based on

[1]See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (explaining that 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").

[2]Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

our review of the record, we conclude that the district court did not abuse its discretion by considering the victim information contained in the presentence report.

Appellant next contends that the sentencing scheme authorized in NRS 200.750 and the sentence imposed in this case constitute cruel and unusual punishment in violation of the United States Constitution because the sentence is disproportionate to the crime. 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.[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]

A person convicted of unlawful use of a minor who is 14 years of age or older in the production of pornography or as the subject of a sexual portrayal is punished for a category A felony by imprisonment for (1) life with the possibility of parole after serving a minimum of 5 years, or (2) a definite term of 15 years with the possibility of parole after serving a minimum of 5 years.[5] Further, a person so convicted is eligible for probation if a psychiatrist or psychologist certifies that the defendant is not a menace to

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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]NRS 200.750(1).

the health, safety, or morals of the community.[6] We conclude that this sentencing scheme in general and the sentence imposed in this case, which was within the statutory parameters, do not shock the conscience. Accordingly, we conclude that the sentencing scheme and the sentence imposed do not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Archie E. Blake, District Judge
Attorney General
Lyon County District Attorney
Law Office of Kenneth V. Ward
Lyon County Clerk

[6]NRS 176A.110; NRS 176A.100.