

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID EARL MCMULLEN,

No. 37959

Appellant,

vs.

**FILED**

OCT 12 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

Respondent.

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted possession of a stolen vehicle. The district court sentenced appellant to a prison term of 19 to 48 months. The district court further ordered appellant to pay restitution in the amount of \$410.43.

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

<sup>1</sup>Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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

<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).


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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.  
Agosti

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

cc: Hon. Richard Wagner, District Judge  
Attorney General/Carson City  
Pershing County District Attorney  
State Public Defender/Carson City  
Pershing County Clerk

<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 205.273(3); NRS 193.330(1)(a)(4); NRS 193.130(2)(d).