

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARSHALL BURGESS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38050

FILED

AUG 24 2001

JY. JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery with the use of a firearm, and one count of trafficking in a controlled substance. The district court sentenced appellant: for robbery, to a prison term of 48 to 156 months, with an equal and consecutive term for the use of a deadly weapon; and for trafficking, to a consecutive prison term of 35 to 156 months.

Appellant's sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ 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 Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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


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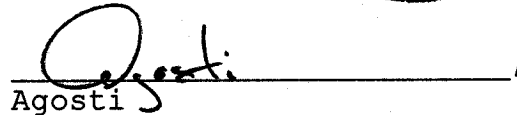
is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.³

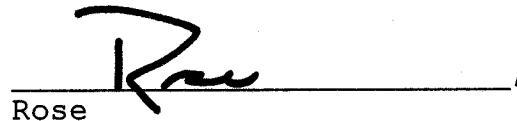
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁴

Having considered appellant's contention and concluded that it is without 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
Robert C. Bell
Washoe County Clerk

³Blume 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)).

⁴See NRS 200.380(2); NRS 193.165(1); NRS 453.3385(2).