IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK ALEXANDER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38056

FILED

SEP 27 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 nolo contendere plea, of one count each of battery with intent to commit sexual assault, burglary, and open or gross lewdness. The district court sentenced appellant to serve consecutive terms of 72-180 months and 48-120 months in prison and 318 days in the Elko County Jail. Appellant received credit for 318 days of presentence incarceration.

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 crimes.[1] 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.[2] 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

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

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

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the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[3]

Moreover, this court has consistently afforded the district court wide discretion in its sentencing decision.[4] 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."[5]

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[6] and that the district court had discretion to impose the sentences consecutively.[7] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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[3]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).

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

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

[6]See NRS 205.060(2) (providing for sentence of 1 to 10 years in prison for burglary); NRS 201.210(1)(a) (providing that first offense open or gross lewdness is a gross misdemeanor); NRS 193.140 (providing for sentence of not more than 1 year in county jail for gross misdemeanor); NRS 200.400(4)(b) (providing for sentence of 2 to 15 years in prison for battery with intent to commit sexual assault where the victim is 16 years of age or older and does not suffer substantial bodily harm as a result of the battery).

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

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. J. Michael Memeo, District Judge
Attorney General
Elko County District Attorney
Larry K. Dunn & Associates
Elko County Clerk