IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD FOSTER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38059

FILED

AUG 22 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 open or gross lewdness. The district court sentenced appellant to serve one year in jail, to be served consecutively to the sentence in an unrelated case.

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.[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

[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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unless the statute fixing punishment is unconstitutional or 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 sentence to be served concurrently or consecutively to appellant's other sentence.[7] The sentence imposed is not so grossly

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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, e.g., 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 201.210(1)(a); NRS 193.140.

[7]See NRS 176.035(3).

disproportionate to the offense as to shock the conscience.[8] Accordingly, we conclude that the sentence imposed does not constitute either cruel or unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General
White Pine County District Attorney
State Public Defender
White Pine County Clerk

[8]Appellant pleaded guilty to masturbating in front of a nurse at the Ely State Prison, where he was incarcerated for robbery with the use of a deadly weapon.