

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY PAUL DILLBACK,

No. 38224

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 27 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Roberts*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of conspiracy to obtain money by false pretenses. The district court sentenced appellant to serve 1 year in the Lyon County Jail, to be served consecutively to any other sentences.

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. In particular, appellant contends that the sentence is unconstitutional because the district court ordered that appellant serve it consecutively to the sentence in a Carson City case in which his probation was revoked as a result of his guilty plea in this case. We conclude that this contention lacks merit.

The Eighth Amendment does not require strict proportionality between crime and a sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.¹ 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

¹Harmelin 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."²

Moreover, this court has consistently afforded the district court wide discretion in its sentencing decision.³ 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."⁴

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,⁵ and that the district court had discretion to impose the sentence consecutively to any prior sentences.⁶ Even assuming that the instant offense led to the revocation of appellant's probation in the unrelated Carson City case,⁷ the revocation of appellant probation in that case was not punishment for the instant offense. Regardless of the probation revocation in the Carson City

²Blume 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).

³See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁵NRS 205.380(1)(a) (obtaining money by false pretenses is a category B felony); NRS 199.480(3) (conspiracy to commit any offense other than certain identified offenses is a gross misdemeanor); NRS 193.140 (gross misdemeanors are punishable by no more than 1 year in county jail).

⁶NRS 176.035(1).

⁷We note that it is not entirely clear that the instant offense led to the revocation of appellant's probation in the Carson City case. The presentence report prepared for the instant case indicates that the violation reports were based on violations of several conditions of appellant's probation, none of which involved the instant offense.

instant offense. Regardless of the probation revocation in the Carson City case, the district court in this case still had discretion to impose any appropriate sentence within the parameters of the relevant statutes and to order that the sentence be served consecutively to the Carson City sentence. Appellant has not demonstrated that the district court abused its discretion in determining that the instant offense warranted a sentence consecutive to that in the Carson City case. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment. We therefore

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

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