

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD EARL WALKER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38244

FILED

OCT 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF 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. The district court sentenced appellant to two consecutive prison terms of 36 to 120 months.

Appellant contends that the district court abused its discretion in sentencing him according to the State's recommendation because it was based on highly suspect evidence identifying appellant as the gunman in the robbery. In particular, appellant contends that the district court should have sentenced him according to the recommendation made by the Division of Parole and Probation to two consecutive terms of 26 to 120 months. We conclude that appellant's contention lacks merit.

The record of appellant's sentencing hearing reveals that the district court based its sentencing decision on the serious nature of appellant's offense, rather than evidence that appellant was the gunman. In fact, the court stated: "But it really is legally of no moment who held the gun to the victim's head. The choice of using a weapon, the choice of entering the business of the victim, the choice of terrorizing the victim, his wife and two-year-old child was occasioned by both Mr. Walker and [his codefendants]. So for those reasons and based upon the serious nature of this crime the Court will follow the recommendation of the State."

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ This court will refrain from


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

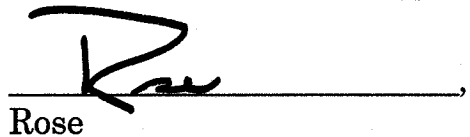
interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."² Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.³

In the instant case, appellant's claim that the district court relied on highly suspect evidence that appellant was the gunman is belied by the record. Further, appellant does not contend that the relevant statutes are unconstitutional. Finally, 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.


Rose J.


Becker J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Kenneth E. Lyon III
Washoe County Clerk

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

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 (providing for a prison term of 2 to 15 years); NRS 193.165 (mandating an equal and consecutive prison term for the use of a deadly weapon).