IN THE SUPREME COURT OF THE STATE OF NEVADA

KELLY THOMAS PELTIER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38467

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery constituting domestic violence. The district court sentenced appellant Kelly Thomas Peltier to serve 12 to 30 months in prison, with credit for 117 days of presentence incarceration.[1]

Peltier contends that the sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution because the sentence is disproportionate to the crime.[2] In particular, Peltier contends that the sentence is disproportionate to the crime because he is an amputee on crutches[3] and merely shook his wife. Peltier also points out that his wife refused to cooperate with the prosecution and that the prosecution's case was based solely on the testimony of a police officer who witnessed the incident, which occurred on a public street in Las Vegas, Nevada. We conclude that Peltier's contention lacks merit.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is

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[1]According to the State, the district court orally pronounced a sentence of 12 to 36 months in prison. The State indicates that it believes the 30-month maximum sentence in the written judgment of conviction was the result of a clerical error and that it will pursue a motion to correct that error in the district court.

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

[3]According to the presentence report, Peltier was hit by a car in 1997 and, as a result, his right lower leg was amputated and he has lost approximately 50% mobility in his right shoulder.

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grossly disproportionate to the crime.[4] 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 the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[5]

Moreover, this court has consistently afforded the district court wide discretion in its sentencing decision.[6] In exercising that discretion, the district court may consider prior crimes in order to gain "a fuller assessment of the defendant's 'life, health, habits, conduct, and mental and moral propensities.'"[7] Given the district court's broad discretion in its sentencing decision, 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."[8]

In the instant case, Peltier 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.[9] Additionally, we conclude that the sentence imposed is not so grossly disproportionate to the offense as to shock the conscience. A police officer testified that he saw Peltier push, grab, and shake his wife on a public

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

[5]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).

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

[7]Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).

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

[9]See NRS 200.485(1)(c) (providing that a third conviction for battery constituting domestic violence within a 7-year period is punishable as a category C felony); NRS 193.130(2)(c) (providing that a person convicted of a category C felony shall be sentenced to prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years).

street in Las Vegas. In imposing sentence, the district court took into consideration the facts of the case and Peltier's life and criminal history. That criminal history includes 106 arrests, 2 felony convictions, and 33 misdemeanor convictions. The prior arrests and convictions involved numerous crimes of violence, including at least five prior convictions since 1995 for misdemeanor battery constituting domestic violence. Under the circumstances, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

Young, J.
Young

Agosti, J.
Agosti

Leavitt, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk