

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DOUGLAS SIMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38577

FILED

JUL 10 2002

MADE BY CLERK
of
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of using a minor under 14 years of age in producing pornography. The district court sentenced appellant John Douglas Sims to serve a prison term of life with parole eligibility after 10 years.

Sims' sole contention is that the district court abused its discretion at sentencing by refusing to grant him probation. In particular, Sims contends that the district court relied upon impalpable evidence, namely, Sims' psychosexual evaluation, which determined the risk was extremely high that Sims would reoffend. Sims claims that the psychosexual evaluation is suspect and unreliable because the Sexual Violence Risk Test (SVR) was not administered. We conclude that the district court did not abuse its discretion by refusing to grant Sims probation.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or

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

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 statutes themselves are constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.³

In the instant case, the sentence imposed is within the parameters provided by the relevant statutes.⁴ Moreover, because Sims' psychosexual evaluation determined he was a high-risk offender, Sims was ineligible for probation.⁵ Although Sims alleges that the psychosexual evaluation was unreliable because the SVR was not administered, the evaluation states that Sims completed the Sexual Violence Risk-20 test. Even assuming the SVR was not administered, there is no indication that the psychosexual evaluation did not satisfy the requirements of NRS 176.139 or was otherwise impalpable.

Moreover, there is no indication that the district court relied upon the psychosexual evaluation in refusing to grant Sims probation. At the sentencing hearing, Sims' counsel questioned the reliability of the psychosexual evaluation, informing the court that Sims denied taking the SVR, and the district court stated that it would note that information.

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 200.710; NRS 200.750(2).

⁵See NRS 176A.110; NRS 176.139; NRS 176.0925; NRS 179D.410(8).

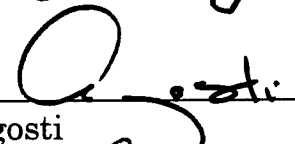
Further, Sims did not request probation because, pursuant to the plea agreement, Sims agreed that he would not seek probation in exchange for the State's promise to drop the sexual assault and lewdness counts, each upon a child under 14 years of age. Despite the plea agreement, the State represented to the court that probation was a sentencing option, and the district court considered whether that sentence was appropriate.

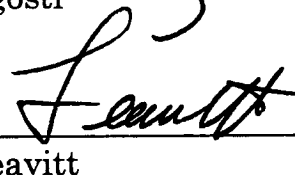
Before imposing sentence, the district court expressly stated that it reviewed and considered the presentence investigation report submitted by the Division of Parole and Probation. That report listed Sims' prior criminal history, in particular, that he had three prior misdemeanor convictions for indecent liberties with a child. Additionally, the district court considered arguments from counsel and Sims' statement expressing remorse for his crime. Accordingly, the district court did not abuse its discretion in refusing to grant Sims probation.

Having considered Sims' contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael R. Griffin, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk