IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38641

FILED

OCT 01 2002

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 one count of lewdness with a child under the age of fourteen years. The district court sentenced appellant Gregory Lewis to serve a term of life in prison with the possibility of parole after ten years.

First, Lewis contends that Nevada's sentencing scheme for lewdness with a child violates the constitutional requirements of substantive due process.[1] More specifically, Lewis argues that the "extreme set of sentencing parameters" for such an offense -- either probation or life in prison -- is irrational, arbitrary, capricious, and impermissibly limits the sentencing discretion of the district court judge. We disagree with Lewis' contention.

"Substantive due process ensures that state action is not random and unpredictable,"[2] and that "no person shall be deprived of life,

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[1]See U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8(5).

[2]Kirkpatrick v. Dist. Ct., 118 Nev. ___, ___, 43 P.3d 998, 1005 (2002).

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liberty or property for arbitrary reasons."[3] With regard to sentencing considerations, substantive due process "requires standards sufficient to enable defendants to protect themselves from arbitrary impositions of punishment."[4] Moreover, those statutory standards "should facilitate the responsible and reliable exercise of sentencing discretion."[5]

For the offense of lewdness with a minor under the age of fourteen years, NRS 201.230 requires a term of life in prison with the possibility of parole after ten years, and the district court has the discretion to impose a fine not to exceed $10,000. Additionally, pursuant to NRS 176A.110, the district court has the discretion to grant probation or suspend the sentence imposed if the offender completes a psychosexual evaluation and "does not represent a high risk to reoffend." In this case, the psychosexual evaluation concluded that although Lewis was not a risk to reoffend with normal supervision, sex offender-specific treatment, and drug treatment: (1) he "should not have unsupervised contact with underage females," and (2) given the length of time he was involved in the sexually molesting behavior, lifetime registration as a sex offender was warranted.

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[3]Arnesano v. State, Dep't Transp., 113 Nev. 815, 819, 942 P.2d 139, 142 (1997) (quoting Allen v. State, Pub. Emp. Ret. Bd., 100 Nev. 130, 134, 676 P.2d 792, 794 (1984) (citation omitted)).

[4]Walters v. State, 848 P.2d 20, 24-25 (Okla. Crim. App. 1993).

[5]Caldwell v. Mississippi, 472 U.S. 320, 329 (1985).

We conclude that the sentencing scheme for lewdness with a minor does not violate the constitutional requirements of substantive due process. The sentencing discretion of the district court reflects the legislature's intent in punishing offenders who harm children. The potential imposition of a term of life in prison with the possibility of parole is rationally related to that objective, as is having the district court retain the discretion to grant probation in the event the offender does not represent a high risk to reoffend. Therefore, the imposition of punishment for the instant offense is not arbitrary, and does not violate due process.[6]

Second, Lewis contends that the sentence is too harsh and disproportionate to the crime, and therefore, constitutes cruel and/or unusual punishment in violation of both the United States and Nevada constitutions.[7] 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.[8] This court has stated that 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

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[6]See Kirkpatrick, 118 Nev. at ___, 43 P.3d at 1005; Arnesano, 113 Nev. at 819, 942 P.2d at 142.

[7]U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

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

the offense as to shock the conscience.'"[9] Further, this court has consistently afforded the district court wide discretion in its sentencing decision,[10] and 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."[11]

In the instant case, Lewis 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.[12] Accordingly, we conclude that the sentence imposed does not constitute cruel and/or unusual punishment under either the federal or state constitution.

Third, Lewis contends the district court erroneously advised him regarding his appellate rights. More specifically, Lewis argues that during his plea canvass, the district court misled him by identifying only two appellate issues -- challenging the validity of his guilty plea and the

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[9]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).

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

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

[12]See NRS 201.230; NRS 176.0927; NRS 176.0931.

effectiveness of counsel -- which are only appropriately raised in post-conviction proceedings. We disagree with Lewis' contention. Lewis read, signed, and indicated during the plea canvass that he understood the formal guilty plea agreement which accurately informed him of his appellate rights. We also note that the instant appeal is, in fact, a direct appeal from the judgment of conviction, and not a post-conviction proceeding. Therefore, we conclude that Lewis has failed to demonstrate that he was prejudiced by the district court.

Having considered Lewis' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

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