IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLIE LEWIS SCHARTOFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38879

FILED

MAR 19 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 two felony counts of uttering a forged instrument. The district court sentenced appellant Allie Lewis Schartoff to serve two consecutive prison terms of 12-34 months, and ordered him to pay restitution in the amount of $3,800.00. Schartoff was given credit for 88 days time served.[1]

Schartoff contends that the sentence is too harsh and constitutes cruel and/or unusual punishment in violation of the United States and Nevada constitutions because it is disproportionate to the crime.[2] We disagree.

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]As part of the guilty plea agreement, the State agreed to not pursue the habitual criminal sentence enhancement pursuant to NRS 207.010, to dismiss the other pending charges against Schartoff, and to not file any new charges arising from the instant offense.

[2]Schartoff primarily relies on Solem v. Helm, 463 U.S. 277 (1983) and Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997) (Rose, J., dissenting).

grossly disproportionate to the crime.[3] 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.'"[4]

This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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 accusations founded on facts supported only by impalpable or highly suspect evidence."[6]

In the instant case, Schartoff does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[7] Accordingly, we conclude that the sentence imposed does not constitute cruel and/or unusual punishment under either the federal or state constitution.

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

[4]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).

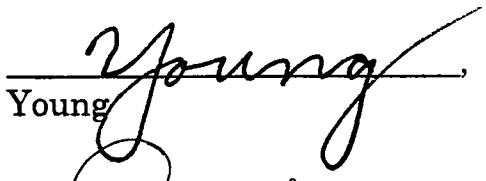
[5]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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

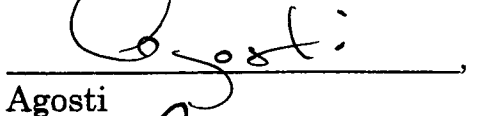
[7]See NRS 205.110; NRS 205.090; NRS 193.130(2)(d).

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

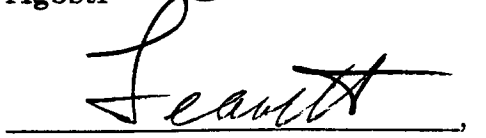
ORDER the judgment of conviction AFFIRMED.



_____, J.
Young



_____, J.
Agosti



_____, J.
Leavitt

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Carson City
Lincoln County District Attorney
Lincoln County Clerk