IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY GLENN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38994

FILED

MAY 0 8 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of sexual assault of a minor under the age of 14 years and lewdness with a child under the age of 14 years. The district court sentenced appellant Leroy Glenn Lewis to serve a prison term of life with the possibility of parole after 240 months for the sexual assault, and a concurrent prison term of life with the possibility of parole after 120 months for the lewdness. Lewis was also ordered to pay $2,045.20 in restitution.

First, Lewis contends that his guilty plea was not entered freely and voluntarily. Lewis argues that defense counsel did not give him enough time to consider the negotiated plea offer, and his plea was therefore coerced. We have held, however, that challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34.[1] Because Lewis has not challenged the validity of his guilty plea in the district court, his claim

[1]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).



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is not appropriate for review on direct appeal from the judgment of conviction.[2]

Second, Lewis contends that his sentence is excessive for a "first time offender." Lewis has not provided any argument or cited to any relevant authority for this proposition. We conclude that Lewis' contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision,[3] 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."[4] 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.[5]

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.[6]

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[2]Id.

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

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

[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)).

[6]See NRS 200.366(3)(c); NRS 201.230.

Accordingly, we conclude that the district court did not abuse its discretion at sentencing, and that the sentence imposed is not too harsh, disproportionate to the crime, or cruel and unusual punishment.

Third, Lewis contends that he received ineffective assistance of counsel. The whole of Lewis' argument is that defense counsel "was deficient for failing to investigate prior to his entry of the guilty plea." This court, however, will generally not consider claims of ineffective assistance of counsel on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in an evidentiary hearing.[7] We conclude that Lewis has failed to demonstrate that we should depart from this policy in his case.[8]

Having concluded that Lewis' contentions are either not cognizable on direct appeal or without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Gibbons

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[7]See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

[8]See id. at 160-61, 17 P.3d at 1013-14.

cc: Hon. Kathy A. Hardcastle, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk