

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGELIO BENITEZ-GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39110

FILED

MAY 03 2002

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of eluding a police officer, a felony. The district court sentenced appellant Rogelio Benitez-Garcia to serve 22 to 70 months in the Nevada State Prison.

Benitez-Garcia's sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh. We conclude that this contention is without merit.

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 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 statute itself is constitutional,

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


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

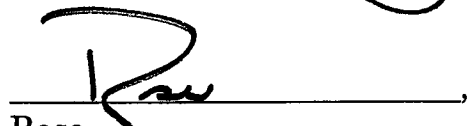
and the sentence is not so unreasonably disproportionate as to shock the conscience.³


In the instant case, Benitez-Garcia does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Rather, Benitez-Garcia simply points out that the district court did not follow the joint recommendation of the State and defense counsel, but instead imposed a more severe sentence, although not as severe as that recommended by the Division of Parole and Probation. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁴

Having considered Benitez-Garcia's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

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 484.348(3)(a).

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk