

IN THE SUPREME COURT OF THE STATE OF NEVADA

STORMY LEE TOMISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39144

FILED

MAY 03 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rehak*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of involuntary manslaughter, a category D felony. The district court sentenced appellant Stormy Lee Tomish to 19 to 48 months in the Nevada State Prison.

Tomish contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.¹ Tomish also contends that the district court abused its discretion by refusing to grant him probation for this offense. 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.² 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

¹Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

²Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

the sentence is so unreasonably disproportionate to the offense as to shock the conscience."³

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

In the instant case, Tomish 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 Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

We also note that whether to grant probation is within the discretion of the district court.⁷ In this case, the district court took note of the severity of this offense and the fact that Tomish had several prior

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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

⁴See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁶See NRS 200.070, 200.090, 193.130(2)(d).

⁷See NRS 176A.100(1)(c).

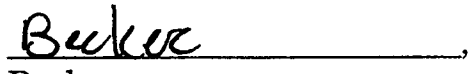
convictions. We conclude that the district court's decision against probation in this case was not an abuse of discretion.

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

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Richard Wagner, District Judge
Attorney General/Carson City
Pershing County District Attorney
State Public Defender/Carson City
State Public Defender/Winnemucca
Pershing County Clerk