

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHONE PHETPHADOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39181

FILED

MAY 09 2002

JANET M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one felony count of driving under the influence with two or more prior convictions. The district court sentenced appellant Chone Phetphadoung to serve a prison term of 15-38 months, and ordered him to pay a fine of \$2,000.00. Phetphadoung was given credit for 145 days time served.

Phetphadoung's sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh and constitutes cruel and unusual punishment. We conclude that Phetphadoung's contention is without merit.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the

crime.¹ Further, this court has consistently afforded the district court wide discretion in its sentencing decision,² 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."³ 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.⁴

In the instant case, Phetphadoung 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.⁵ Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

¹Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

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

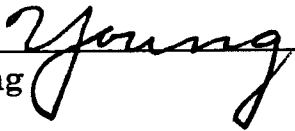
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

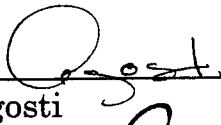
⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

⁵See NRS 484.379; NRS 484.3792(1)(c).

Therefore, having considered Phetphadoung's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Young

 J.
Agosti

 J.
Leavitt

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk