

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE LUIS ESCARCEGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39223

FILED

MAR 29 2002

JANE ITE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
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 attempted grand larceny of a motor vehicle. The district court sentenced appellant George Luis Escarcega to serve a prison term of 19-48 months, and ordered him to pay restitution in the amount of \$500.00. Escarcega was given credit for 107 days time served.

Escarcega 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.¹ We disagree.

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

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 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

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

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).

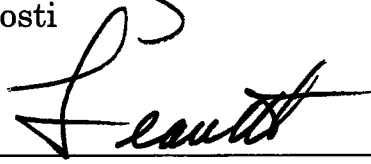
In the instant case, Escarcega does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁶ Accordingly, we conclude that the sentence imposed does not constitute cruel and/or unusual punishment under either the federal or state constitution.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁶See NRS 205.228(3); NRS 193.330(1)(a)(3); NRS 193.130(2)(c).

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