IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39313

FILED

OCT 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant to a prison term of 24 to 96 months. The district court also ordered appellant to pay a fine in the amount of $10,000.00.

After appellant entered his plea, he failed to appear for sentencing and was not apprehended for approximately two years. After his apprehension, and prior to sentencing, appellant filed a motion to withdraw his guilty plea. In the motion, appellant alleged that his attorney, a deputy public defender who had since retired, had not explained the negotiations, that appellant does not read English and that no one read the guilty plea agreement to him. Appellant's new attorney, also a deputy public defender, moved to withdraw. The district court denied counsel's motion to withdraw and also denied the motion to withdraw the plea.

Appellant's first contention on appeal is that the district court erred by denying counsel's motion to withdraw because it is "unseemly" for counsel to question the performance of his former colleague. We disagree.

Where a defendant asserts legitimate grounds for withdrawal of the plea based on ineffective assistance of trial counsel, the district

court is required to appoint new counsel to assist the defendant in pursuing his motion since, in such circumstances, trial counsel cannot properly continue representation.[1] However, the district court has discretion in considering a request for substitution of counsel and, absent a showing of adequate cause such as an actual conflict, a defendant's request may be denied.[2]

In the instant case, we conclude the district court did not abuse its discretion in refusing to substitute alternate counsel. Appellant's complaints about trial counsel and the validity of his plea are belied by the record. Specifically, at the plea canvass, appellant informed the court that: (1) he read, wrote and understood English; (2) that he had reviewed the guilty plea agreement and discussed it with his attorney; (3) that his plea was being entered freely and voluntarily; (4) that he understood the rights he was waiving by pleading guilty; and (5) that he was pleading guilty because in fact he was guilty. Consequently, the district court was not required to appoint different counsel to assist appellant in pursuing a motion to withdraw his plea.

Appellant also 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.[3] We disagree.

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[1]See SCR 157, SCR 160, SCR 178.

[2]See Baker v. State, 97 Nev. 634, 637 P.2d 1217 (1981), overruled on other grounds by Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990); Thomas v. State, 94 Nev. 605, 584 P.2d 674 (1978).

[3]Appellant 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.[4] 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.'"[5]

This court has consistently afforded the district court wide discretion in its sentencing decision.[6] 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."[7]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[8] Accordingly,

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

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

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

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

[8]See NRS 453.3385(2).

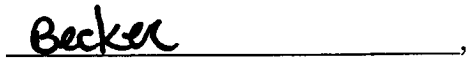
we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt



_____, J.
Becker

cc: Hon. Dan L. Papez, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk