IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN CHRISTOPHER IVY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39377

FILED

OCT 07 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance for the purpose of sale. The district court sentenced appellant John Christopher Ivy to serve a prison term of 12-34 months, and ordered him to pay restitution in the amount of $33.36; he was given credit for 49 days time served.

Ivy's sole contention is that the district court abused its discretion at sentencing because the sentence is excessive and constitutes cruel and unusual punishment.[1] Ivy argues that his "drug problem" would be best addressed by being placed on probation or in a diversion program. We conclude that Ivy'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

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

crime.[2] Further, this court has consistently afforded the district court wide discretion in its sentencing decision,[3] 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."[4] 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.[5]

In the instant case, Ivy cannot demonstrate that the district court relied only 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] and that the granting of probation is discretionary.[7] Accordingly, we

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

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

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

[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 NRS 453.337(2)(a); NRS 193.130(2)(d).

[7]See NRS 176A.100(1)(c).

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

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Story & Sertic Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk