IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. PALUMBO A/K/A NICHOLAS PALUMBO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39570

FILED

AUG 23 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted obtaining and using personal identification information from another. The district court sentenced Michael P. Palumbo to serve a prison term of 12 to 48 months.

In October 2001, Palumbo was arrested for several theft-related offenses, which were charged in two separate cases. After Palumbo pleaded guilty to burglary and possession of a stolen vehicle in those two unrelated cases, the State discovered Palumbo had entered his guilty pleas using his cousin Nicholas David Palumbo's name and identity. Subsequently, the State amended the plea agreements and informations to correct the names, and also separately charged Palumbo with two counts of attempted obtaining and using personal identification information of another. Palumbo pleaded guilty to one of those counts, resulting in the instant appeal.

Palumbo first contends that the State breached the plea agreement by filing additional charges arising against him. In particular, Palumbo argues that the State should not have prosecuted him for burglary and possession of a stolen vehicle because those charges arose

"out of the same set of facts that he negotiated" in the instant case. We disagree.

When the State enters a plea agreement, it is held to "'the most meticulous standards of both promise and performance'" in fulfillment of both the terms and the spirit of the plea bargain.[1] Due process requires that the bargain be kept when the guilty plea is entered.[2]

In the instant case, the record reveals that the State fulfilled the terms and spirit of the plea agreement. As required by the terms of the plea agreement, the State dropped one of the two counts of attempted obtaining and using personal identification information of another and did not oppose Palumbo's request to serve the sentence concurrent to the sentences imposed in the burglary and possession of a stolen vehicle cases.

To the extent that Palumbo argues that the State promised it would not prosecute the burglary and possession of a stolen vehicle cases, we reject Palumbo's argument. There is no evidence in the record that the State promised that it would drop those cases. In fact, when Palumbo entered his guilty plea in the instant case, he had already pleaded guilty in the burglary and possession of a stolen vehicle cases.[3] Additionally, at the plea canvass, Palumbo acknowledged the State's promise not to oppose his request to serve the sentence in the instant case concurrent to the

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[1]Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

[2]Id.

[3]Although Palumbo had already pleaded guilty in the burglary and possession of a stolen vehicle case, he had not yet been sentenced.

sentences in those cases. Accordingly, we conclude that the State did not breach the plea agreement.

Palumbo next contends that the district court abused its discretion at sentencing. Specifically, Palumbo contends that the district court should have treated his offense as a gross misdemeanor, instead of a felony, because he had previously pleaded guilty to the burglary and possession of a stolen vehicle cases "arising from the same circumstances," and his criminal history was not significant. We conclude that Palumbo's contention lacks merit.

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] Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statutes themselves are constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.[6]

In the instant case, Palumbo 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

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

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

[6]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)).

was within the parameters provided by the relevant statutes.[7] Accordingly, the district court did not abuse its discretion at sentencing.

Having considered Palumbo's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

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

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[7]See NRS 205.463(2); NRS 193.330(1)(a)(6).