IN THE SUPREME COURT OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39717

FILED

JUL 9 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole.

Appellant argues that the district court failed to consider a pre-sentence motion to withdraw a guilty plea that he submitted to the district court after entry of his plea.[1] Appellant asserts that the clerk of the district court stamped his motion "received" and returned the motion to him because the clerk of the district court mistakenly believed that appellant was not permitted to file additional documents in the district court. Appellant notes that on November 15, 2001, the district court established a briefing schedule for the filing of proper person pre-trial

[1]Appellant also argues that the district court failed to consider his post-conviction motion to withdraw a guilty plea. Appellant's post-conviction motion to withdraw a guilty plea was filed after entry of the judgment of conviction and after appellant's direct appeal was docketed in this court. Any claims relating to the post-conviction motion to withdraw a guilty plea are not cognizable in this appeal.

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motions, and appellant asserts that the clerk of the district court mistakenly understood this to mean that he was not permitted to file any documents after the deadline established in the briefing schedule. Appellant argues that the clerk of the district court had a duty to file his motion. Consequently, he argues that he should be permitted to withdraw his plea.

This court has long held that the clerks of the district courts have an absolute duty to file documents received in the district court and to keep an accurate record of the documents submitted to the district court.[2] The clerk of the district court failed in this duty by stamping appellant's motion "received" and returning the motion to appellant without causing the motion to be filed in the record maintained at the district court. The clerk of the district court erroneously concluded that the briefing schedule established by the district court to facilitate the review of appellant's numerous pre-trial motions prevented appellant from filing any documents after the deadline. Nevertheless, we conclude that appellant is not entitled to the relief requested because he failed to demonstrate that he was prejudiced. Appellant's pre-sentence motion to withdraw a guilty plea failed to set forth any reason that was fair and just to permit withdrawal of the guilty plea.[3]

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[2]See Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995); Donoho v. District Court, 108 Nev. 1027, 842 P.2d 731 (1992); Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992); Huebner v. State, 107 Nev. 328, 810 P.2d 1209 (1991).

[3]See Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001); Woods v. State, 114 Nev. 468, 958 P.2d 91 (1998); State v. District Court, 85 Nev. 381, 455 P.2d 923 (1969). To the extent that appellant argues that the district court erred in allowing him to represent himself and enter a guilty

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Next, appellant 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. We disagree.

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

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. . . *continued*
plea, appellant's claims lack merit. The district court conducted a thorough canvass and inquired into appellant's use of medication and whether it would interfere with his thought process. Appellant informed the court that the medication would not cause any interference. The documents before this court reveal that the district court did not err in determining that appellant was competent to represent himself. See Johnson v. State, 117 Nev. 153, 17 P.3d 1008 (2001). There is no indication that appellant was incompetent to enter a guilty plea.

[4]Harmelin v. Michigan, 501 U.S. 957, 1001 (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)).

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

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 has failed to demonstrate 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.[8] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[9]

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

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

[8]See NRS 201.230.

[9]On May 19, 2003, Ms. Lori C. Teicher notified this court that she had changed law firms. On June 9, 2003, Ms. Teicher's former law firm, Robert L. Langford & Associates, notified this court that it was substituting in as appellant's attorney of record.

cc: Hon. Donald M. Mosley, District Judge
Robert L. Langford & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk