IN THE SUPREME COURT OF THE STATE OF NEVADA

JONAS RAY MCCLELLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39729

FILED

JUN 12 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of two counts of lewdness with a child under 14 years of age. The district court sentenced appellant Jonas Ray McClelland to serve two concurrent prison terms of life with the possibility of parole after 10 years, and ordered him to pay $200.00 in restitution.

McClelland's sole contention is that the district court abused its discretion at sentencing. Citing to the dissent in Tanksley v. State[1] for support, McClelland argues that this court should review the sentence imposed by the district court to determine whether justice was done. McClelland contends that the district court failed to even consider the imposition of a term of probation even though the risk assessment evaluation rated him as a low risk to reoffend, and the Department of Parole and Probation recommended probation. We disagree with McClelland's contention.

This court has consistently afforded the district court wide discretion in its sentencing decision[2] and will refrain from interfering with

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

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

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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."[3] 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.[4]

In the instant case, McClelland does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. The sentence imposed was within the parameters provided by the relevant statute.[5] At the sentencing hearing, the district court stated that it carefully considered the risk assessment report, and noted that while McClelland was eligible for probation, it was nonetheless basing its sentencing decision on the seriousness of the offense – two lewd acts committed upon McClelland's three-year-old daughter. Moreover, the granting of probation is discretionary.[6] Accordingly, we conclude that the sentence imposed is not too harsh, is not disproportionate to the crime, does not constitute cruel and unusual punishment, and that the district court did not abuse its discretion at sentencing.

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

[4]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)).

[5]See NRS 201.230.

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

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk