IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ADRIAN TEACHOUT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39781

FILED

OCT 07 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 three counts of burglary.[1] The district court sentenced appellant Thomas Teachout to serve three consecutive terms of 22 to 120 months, 22 to 120 months, and 12 to 120 months, respectively, in the Nevada State Prison.

Teachout's first contention on appeal is that the district court abused its discretion by sentencing him to consecutive rather than concurrent sentences. We conclude that Teachout's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[2] 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

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[1]In his guilty plea agreement, Teachout reserved the right to appeal from the denial of his motion to suppress and his motion to sever.

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

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, Teachout 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 is within the parameters provided by the relevant statute.[5] Moreover, it is within the district court's discretion to impose consecutive sentences.[6] We also note that Teachout's prior criminal history is extensive.

Teachout contends next that the district court erred by not granting his motion to sever his trial from that of his two codefendants. Teachout points out, however, that the district court never ruled on this motion. We conclude that because there was no ruling made, the alleged

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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 205.060(2).

[6]See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

error was not preserved for appellate review.[7] Therefore, we are unable to consider this claim.[8]

Teachout claims next that the district court erred in denying his motion to suppress his statement to police because he did not validly waive his Miranda rights, specifically his right to counsel.[9] We conclude that the district court did not err in this regard.

Our review of the record shows that the district court watched the police videotape of Teachout's questioning and ruled that Teachout did

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[7]See, e.g., Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987) (holding that "[i]n order to preserve for appellate consideration allegations of misconduct in a closing argument, the accused must make a timely objection, obtain a ruling and request an admonition of counsel and an appropriate instruction to the jury"); Clark v. State, 89 Nev. 392, 513 P.2d 1224 (1973) (holding that appellate review of contention was precluded by defendant's failure to move for mistrial, admonishment, or special instruction to jury after defendant's objection was sustained).

Although this court may address plain or constitutional error sua sponte, we decline to do so because no error of constitutional magnitude could have occurred under these circumstances. See Lincoln v. State, 115 Nev. 317, 322, 988 P.2d 305, 308 (1999). Specifically, Teachout challenges the denial of his motion to sever his trial, and no joint trial was ever held because all three codefendants pleaded guilty before trial was scheduled to begin.

[8]See, e.g., Mears v. State, 83 Nev. 3, 11, 422 P.2d 230, 235 (1967) (holding that allegation that appellant was without counsel when examined by psychiatrist was not established by the record on appeal, and therefore this court would not consider it) (criticized on other grounds by Franklin v. District Court, 85 Nev. 401, 455 P.2d 919 (1969)).

[9]See Miranda v. Arizona, 384 U.S. 436 (1966).

in fact validly waive his right to counsel. The district court found that Teachout invoked his right to counsel by asking for an attorney. The officers then told Teachout that the interview would terminate at that point if he wanted an attorney present. After a brief pause, however, Teachout initiated further conversation with the officers about the possibility of a plea bargain. The conversation continued, and Teachout confessed to the crimes. The district court found that Teachout clearly waived his right to have an attorney present by reinitiating talks with the officers.[10] We conclude that the district court's finding that Teachout validly waived his Miranda rights is supported by substantial evidence.[11]

In a related argument, Teachout claims that he was unable to validly waive his Miranda rights because, during the police interview, he was under the influence of methamphetamine and was also suffering from withdrawal from methamphetamine, due to the severity of his addiction. Teachout further contends that the police officers engaged in coercive conduct by not giving him the cigarette he requested until he gave them

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[10]See North Carolina v. Butler, 441 U.S. 369, 373 (1979) ("[t]he courts must presume that a defendant did not waive his rights; the prosecution's burden is great; but in at least some cases waiver can be clearly inferred from the actions and words of the person interrogated").

[11]Steese v. State, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998) (holding that where district court's determination that a confession is voluntary is supported by substantial evidence, this court will not substitute its judgment for that of the district court) (citation omitted).

further information about the crimes. We conclude that the district court properly rejected these arguments as well.

In U.S. v. Kelley, the United States Court of Appeals for the Ninth Circuit held that a defendant's post-arrest statement may not be admitted at trial if, because of the defendant's mental illness, drug use, or intoxication, the statement was not a product of rational intellect and free will.[12] This court reached a similar conclusion in Pickworth v. State.[13] In both Kelley and Pickworth, however, drug withdrawal symptoms were not found to have rendered the confessions involuntary. In both cases, the interviewees were able to converse with police officers in a coherent manner and to provide detailed facts about the charged crimes.[14]

In this case, similarly, the district court found that Teachout's statement was voluntary, and we conclude this finding is supported by substantial evidence. Teachout spoke coherently with the officers, giving them details about the burglaries and the stolen items, and attempting repeatedly to obtain leniency in exchange for information about the crimes.

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[12]953 F.2d 562, 565 (9th Cir. 1992) (disapproved of on other grounds by U.S. v. Kim, 105 F.3d 1529 (9th Cir. 1997)).

[13]95 Nev. 547, 549, 598 P.2d 626, 627 (1979).

[14]Kelley, 953 F.2d at 565; Pickworth, 95 Nev. at 549, 598 P.2d at 627. See also Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996) (noting confession is inadmissible only if accused was intoxicated to extent accused was unable to understand the meaning of his comments) (footnote and citation omitted).

The district court also found that the police officers did not coerce Teachout into confessing by denying him a cigarette. We agree. The transcript of Teachout's statement demonstrates that the exchange regarding the cigarette was merely an attempt to bargain with Teachout to obtain voluntary information about specific crimes. We conclude that the district court's finding that Teachout was not coerced is supported by substantial evidence.

Having considered Teachout's contentions and concluding that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. James W. Hardesty, District Judge
M. Jerome Wright
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk