IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROGERS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39902

FILED

JAN 12 2004

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 two counts of sexual assault on a minor under 16 years of age. The district court sentenced appellant James Rogers, Jr. to serve two consecutive prison terms of 5 to 20 years.

Rogers first contends that the district court abused its discretion at sentencing because the sentence is too harsh. In particular, Rogers contends that given the fact that he is 51 years old, the sentence imposed amounts to a life sentence. We conclude that Rogers' contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[1] 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

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

suspect evidence."[2] 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.[3]

In the instant case, Rogers 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.[4] Finally, we conclude that the sentence is not so unreasonably disproportionate to the charged offenses as to shock the conscience.[5] Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Rogers next contends that the district court abused its discretion by admitting evidence of prior bad acts. Rogers does not allege, and the record does not indicate, that Rogers expressly preserved the right

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

[3]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)).

[4]See 1999 Nev. Stat., ch. 105, § 23, at 432 (providing for a prison term of life with parole eligibility in 20 years or a prison term of 5 to 20 years).

[5]Rogers pleaded guilty to two counts of sexual assault on a minor under 16 years of age for inserting his hand into the vagina of his nine-year-old granddaughter and for inserting his penis into the vagina of his seven-year-old granddaughter.

to appeal this issue prior to pleading guilty.[6] Therefore, we decline to consider the merits of Rogers' contention because he waived the issue by entering a guilty plea.[7]

Finally, Rogers contends that his guilty plea is invalid because the district court did not adequately canvass him with respect to the voluntariness of his plea. Again, we decline to consider this issue. Generally, this court will not consider a challenge to the validity of the guilty plea on direct appeal from the judgment of conviction.[8] "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."[9] After having reviewed the record, we conclude that Rogers must bring his

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[6]See NRS 174.035(3) (noting that, with the consent of the district court and the district attorney, a defendant pleading guilty may reserve in writing the right to appeal an adverse determination on a specified pretrial motion).

[7]See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (holding that guilty plea waives all errors, including deprivation of constitutional rights, that occurred prior to entry of guilty plea); see also Tollett v. Henderson, 411 U.S. 258, 267 (1973).

[8]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[9]Id.; but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989) and Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994) (considering the validity of a guilty plea on direct appeal where the record on appeal clearly demonstrates error).

challenge to the validity of his guilty plea in the district court in the first instance.

Having considered Rogers' contentions and concluded that they either lack merit or are inappropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Craig A. Mueller
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk