IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL ALVIN EMERICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39903

FILED

OCT 15 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of obtaining and/or using the personal identifying information of another. The district court sentenced appellant to a prison term of 96 to 240 months.

Appellant first contends that the district court abused its discretion at sentencing because the sentence is too harsh. We conclude that appellant's 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 suspect evidence."[2] Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional,

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

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

and the sentence is not so unreasonably disproportionate as to shock the conscience.[3]

In the instant case, appellant 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 was within the parameters provided by the relevant statute.[4]

Appellant also contends that the sentence violates the establishment clause of the First Amendment of the United States Constitution. Specifically, appellant argues that the district court was unduly influenced by the fact that the victim in this case was a member of the clergy. The record does not support appellant's argument.

Nonetheless, we conclude that the district court did err at sentencing. When pronouncing sentence, the district judge referred to a statement by the victim that at the time appellant stole checkbooks and other items from the victim's mailbox, there was also a lot of other mail theft going on in the neighborhood. The district judge said: "And those other ones that you talked about in the neighborhood, it was him. We all know it. And that's why he is going to prison for at least eight years."

This court has previously held: "While a district court has wide discretion to consider prior uncharged crimes during sentencing, the district court must refrain from punishing a defendant for prior uncharged

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[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 NRS 205.463(1).

crimes."[5] We conclude that the district court punished appellant for the additional uncharged crimes that were not proved at sentencing, and the sentence must therefore be reversed. Although appellant did not object at sentencing to the judge's comments, we conclude that the comments amount to plain error.[6] Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to a different district judge for resentencing.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Jack A. Alian
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[5]Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996).

[6]See Pray v. State, 114 Nev. 455, 459, 959 P.2d 530, 532 (1998).