IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE KIYOSHI AUGUSTUS-CLARK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40296
DALE KIYOSHI AUGUSTUS-CLARK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40297

FILED

DEC 31 2002

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

ORDER OF AFFIRMANCE

Docket No. 40296 is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny. The district court sentenced appellant to serve a prison term of 12 to 36 months. Docket No. 40297 is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted burglary. The district court sentenced appellant to serve a prison term of 12 to 36 months to run consecutively to the sentence imposed in Docket No. 40296.

Appellant contends that the district court abused its discretion at sentencing in imposing consecutive sentences. Appellant also contends that the district court abdicated its sentencing discretion by imposing the sentence recommended by the Division of Parole and Probation. Citing the dissent in Tanksley v. State,[1] appellant argues that this court should review the sentences imposed to ensure that justice was done. We conclude that appellant's contentions lack merit.

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

This court has consistently afforded the district court wide discretion in its sentencing decision.[2] We will not interfere 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."[3] Moreover, 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.'"[4]

Here, appellant does not allege that the district court relied on impalpable or highly suspect evidence. Further, the sentences imposed are within the parameters provided by the relevant statutes and are not so unreasonably disproportionate to the offenses charged as to shock the conscience. Moreover, we note that the district court had discretion to impose those sentences concurrently or consecutively.[5] Finally, we conclude that the fact that the court imposed the sentence recommended by the Division of Parole and Probation does not demonstrate that the court abdicated its sentencing discretion. In fact, at the sentencing hearing, the district court explained that it was sentencing appellant to

---

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

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

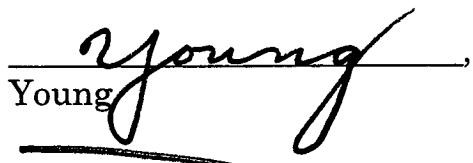
[4]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-20 (1979)).

[5]See NRS 205.222; NRS 193.130(2)(c); NRS 205.060(2); NRS 193.330(1)(a)(2).

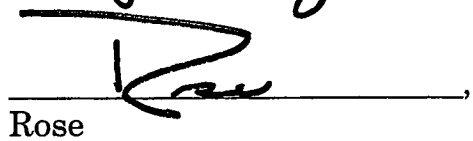
consecutive prison time because "of [his] criminal history and [his] ongoing criminal conduct" and that it believed appellant "pose[d] a danger to any community [he was] in when [he was] committing this criminal conduct." Accordingly, the district court did not abuse its discretion at sentencing.

Having considered appellant's contentions and concluded that they lack merit, we

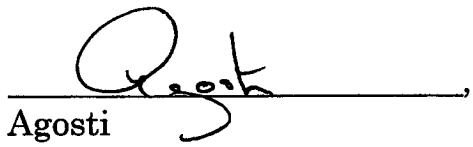
ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Young



_____, J.
Rose



_____, J.
Agosti

cc: Hon. Janet J. Berry, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk