IN THE SUPREME COURT OF THE STATE OF NEVADA

OLIVER HARNESS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40326

FILED

MAR 0 5 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 three counts of statutory sexual seduction. The district court sentenced appellant Oliver Harness to serve two concurrent prison terms of 19-48 months and one consecutive prison term of 19-48 months, and ordered him to pay $1,750.00 in restitution.

Harness contends that the district court abused its discretion at sentencing by refusing to allow him to fully explore, through cross-examination, the victim's prior sexual conduct and/or prior fabricated sexual allegations. Harness argues that the district court's application of the rape-shield statute, NRS 50.090,[1] was too strict and failed to take into

[1]NRS 50.090 provides:

> In any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime, the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct, in which case the scope of the accused's cross-examination of the victim or

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account the exceptions to the rule discussed in Summitt v. State[2] and Miller v. State.[3] We conclude that Harness' contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] We 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."[6] In other words, "in the absence of a showing of abuse of such discretion, we will not disturb the sentence."[7] And finally, despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the

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rebuttal must be limited to the evidence presented by the prosecutor or victim.

[2]101 Nev. 159, 164, 697 P.2d 1374, 1377 (1985) (holding that "'a defendant must be afforded the opportunity to show, by specific incidents of sexual conduct, that the prosecutrix has the experience and ability to contrive a statutory rape charge against him'") (quoting State v. Howard, 426 A.2d 457, 462 (N.H. 1981)).

[3]105 Nev. 497, 500-01, 779 P.2d 87, 89 (1989) (holding that "prior false accusations of sexual abuse or sexual assault by complaining witnesses do not constitute 'previous sexual conduct' for rape shield purposes").

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

[5]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

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

[7]Deveroux v. State, 96 Nev. 388, 390, 610 P.2d 722, 723 (1980).

statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[8]

Initially, we note that Harness has failed to articulate how exactly he might have been prejudiced by the district court's evidentiary decisions during the sentencing hearing. Moreover, we conclude that Harness has failed to demonstrate how the district court abused its discretion.[9] Although the district court limited the extent of defense counsel's questioning of one of the victims about her sexual history, the district court heard arguments from counsel amounting to an offer of proof. Nevertheless, much of the evidence sought for admission by defense counsel at the sentencing hearing was not actually relevant to sentencing, but rather to the issue of guilt or innocence, even though Harness had already pleaded guilty and admitted to having sex with the two minor female victims. Therefore, Harness' reliance on Summitt and Miller is misplaced. Additionally, the district court stated, prior to sentencing Harness, that the court considered all of defense counsel's arguments, and as a result, imposed a lighter sentence than that recommended by the Division of Parole and Probation.

Finally, Harness does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are

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[8]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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[9]See Randell v. State, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) ("'[J]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence.'") (quoting People v. Mockel, 276 Cal. Rptr. 559, 563 (Ct. App. 1990)).

unconstitutional, and he cannot demonstrate that the sentence was so unreasonably disproportionate to the crime as to shock the conscience. We also note that the sentence imposed by the district court was within the parameters provided by the relevant statutes,[10] and that it is within the district court's discretion to impose consecutive sentences[11] or grant probation.[12]

Accordingly, having considered Harness' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.[13]

_____, C.J.
Shearing

_____, J.
Becker

_____, J.
Gibbons

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[10]NRS 200.368(1); NRS 193.130(2)(c) (a category C felony providing for a term of imprisonment of 1-5 years).

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

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

[13]Because Harness is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Harness unfiled all proper person documents he has submitted to this court in this matter.

cc: Hon. Richard Wagner, District Judge
Kyle B. Swanson
Attorney General Brian Sandoval/Carson City
Humboldt County District Attorney
Humboldt County Clerk