

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER ANTHONY SANDOVAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40602

FILED

AUG 15 2003

ORDER OF AFFIRMANCE

JANETTE M. E. COOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted burglary. Appellant Peter Anthony Sandoval was initially granted entry into a probationary diversion treatment program; however, after failing to comply with the conditions of his program, the district court revoked the grant of diversion and sentenced Sandoval to serve a prison term of 12-60 months.

Sandoval's sole contention on appeal is that the district court abused its discretion at sentencing because the sentence is excessive, disproportionate to the crime, and constitutes cruel and unusual punishment in violation of both the United States and Nevada constitutions.¹ Sandoval argues that he is only twenty years old, and his alcohol problem "would be best addressed by reinstatement of his diversion program rather than state prison." We conclude that Sandoval's contention is without merit.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the

¹See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. Sandoval relies on Solem v. Helm, 463 U.S. 277 (1983), for support.

crime.² Further, this court has consistently afforded the district court wide discretion in its sentencing decision,³ and 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.”⁴ Despite its severity, 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.⁵

In the instant case, Sandoval cannot demonstrate that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. We note that the sentence imposed was within the parameters provided by the relevant statutes.⁶ Further, based on Sandoval’s well-documented noncompliance with the terms of his diversion program, the Division of Parole and Probation recommended rescinding the program and sentencing him to serve the sentence ultimately imposed by the district court. In considering whether to reinstate the diversion program, the district court stated:

²Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁵Blume 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).


⁶See NRS 205.060(1); NRS 193.330(1)(a)(3); NRS 193.130(2)(c).


My philosophy is, you get one chance at probation or Diversion. . . . [A]nd there were lots of violations. He was not an exemplary candidate on Diversion We had lots of discussions where he wasn't complying 100 percent when he came back, and I kept on giving him the opportunity to do that until he finally ran out of rope. And this is not an issue of money; it's an issue of failing to comply. And I see no reason why you should receive a benefit for that. There's lots of people who work very, very hard at their Diversion programs. It's a huge benefit. You violate it, and you don't get it.

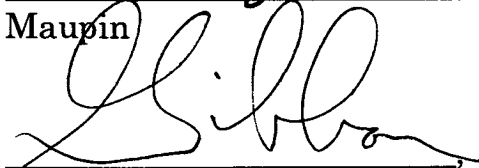
Accordingly, we conclude that the district court did not abuse its discretion at sentencing, and the sentence imposed is not excessive or disproportionate to the crime, and does not constitute cruel and unusual punishment under either the federal or state constitution.⁷

Having considered Sandoval's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

⁷See Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978).

cc: Hon. Connie J. Steinheimer, District Judge
Story & Sertic Ltd.
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk