IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIA LYNN IRELAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40674

FILED

APR 21 2003

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 nolo contendere plea, of two counts of statutory sexual seduction (counts I-II) and three counts of conspiracy to commit sexual assault (counts III-V). The district court sentenced appellant Maria Lynn Ireland to serve: a prison term of 12 to 32 months for count I, a consecutive prison term of 24 to 60 months for count II, a consecutive prison term of 28 to 72 months for count III, and two consecutive prison terms of 12 to 36 months for counts IV and V.

Ireland first contends that the district court erred in failing to credit her 157 days for time spent in presentence confinement. We conclude that Ireland's first contention is moot. On February 14, 2003, after Ireland filed her fast track statement, the district court entered an amended judgment of conviction crediting Ireland with the 157 days that she requested for time she spent in presentence confinement. Because Ireland has already received the presentence incarceration credit requested, a remand of her case is no longer necessary.

Ireland next contends that the district court violated Ireland's due process rights at the sentencing hearing by admitting unsworn

testimony from the victim's mother. We conclude that any error involving the admission of the victim's mother's testimony was harmless.

In Buschauer v. State,[1] this court held that due process requires that a victim must be sworn in prior to testifying at the sentencing proceeding. Here, as Ireland notes, the district court failed to swear in the victim's mother prior to her testimony. However, Ireland failed to object or otherwise request that the witness be sworn in prior to testifying.[2] Further, our review of the transcript of the sentencing proceeding reveals that the district court's failure to swear in the victim's mother prior to testifying was harmless error because there is no indication that the district court based its sentencing decision on that unsworn testimony.[3] In fact, at the sentencing hearing, the district court explained its reason for imposing consecutive sentences, namely, that the offenses involved the sexual assault of multiple, young victims who would suffer lifelong ill-effects as a result of Ireland's crimes. Accordingly, we conclude that Ireland is not entitled to a new sentencing hearing based on a violation of her right to due process.

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[1]106 Nev. 890, 804 P.2d 1046 (1990).

[2]See Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992) (noting that the failure to object to the admission of witness testimony generally precludes appellate review absent plain or constitutional error).

[3]See Lane v. State, 110 Nev. 1156, 1166, 881 P.2d 1358, 1365 (1994), vacated on other grounds on rehearing, 114 Nev. 299, 956 P.2d 88 (1998) (recognizing that the erroneous admission of victim-impact statements is subject to harmless-error analysis); Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) ("The district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision.").

Finally, Ireland contends that the sentence imposed constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crimes.[4] We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[5] 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.'"[6]

This court has consistently afforded the district court wide discretion in its sentencing decision.[7] 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."[8]

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[4]Ireland primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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

[6]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).

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

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

In the instant case, Ireland does not allege that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes, and the sentence is not so unreasonably disproportionate to the offenses committed as to shock the conscience.[9] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Brian Sandoval/Carson City
Lincoln County District Attorney
Lincoln County Clerk

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[9]See NRS 200.368(1); NRS 193.130(2)(c); NRS 199.480(1)(a).