

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PETER LEAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40829

MICHAEL PETER LEAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40830

**FILED**

AUG 20 2003

ORDER OF AFFIRMANCE

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

These are consolidated appeals from judgments of conviction, pursuant to guilty pleas, of one count each of burglary and grand larceny. For the burglary, the district court sentenced appellant Michael Peter Lear to serve a prison term of 16-72 months and ordered him to pay \$5,840.35 in restitution. For the grand larceny, the district court sentenced Lear to serve a consecutive prison term of 16-72 months and ordered him to pay \$22,199.43 in restitution.

Lear's sole contention on appeal is that the district court abused its discretion at sentencing by not placing him on probation, or alternatively, by not imposing concurrent sentences. Citing to the dissent in Tanksley v. State<sup>1</sup> for support, Lear argues that this court should review the sentences imposed by the district court to determine whether justice was done. We conclude that Lear's contention is without merit.

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<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

This court has consistently afforded the district court wide discretion in its sentencing decision 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.”<sup>2</sup> Regardless of 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.<sup>3</sup>

In the instant case, Lear does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. We also note that the sentences imposed were within the parameters provided by the relevant statutes.<sup>4</sup> Additionally, it is within the district court's discretion to impose consecutive sentences<sup>5</sup> or grant probation.<sup>6</sup> Accordingly, we conclude that the sentence imposed is not too harsh, is not disproportionate to the crime, does not constitute cruel and unusual punishment, and that the district court did not abuse its discretion at sentencing.

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<sup>2</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>3</sup>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)).

<sup>4</sup>See NRS 205.060(2); NRS 205.222(3), (4).


<sup>5</sup>See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

<sup>6</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, J.  
Shearing

 \_\_\_\_\_, J.  
Leavitt

 \_\_\_\_\_, J.  
Becker

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk