

IN THE SUPREME COURT OF THE STATE OF NEVADA

NELSON GREGORY MALLOCH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40842

FILED

AUG 15 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of coercion, and one count of grand larceny. The district court sentenced appellant to a prison term of 24 to 60 months for coercion and a concurrent prison term of 18 to 48 months for grand larceny.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.<sup>1</sup> 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.<sup>2</sup> Regardless of its severity, a

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<sup>1</sup>Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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

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."<sup>3</sup>

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> 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."<sup>5</sup>

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>6</sup> Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

<sup>4</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

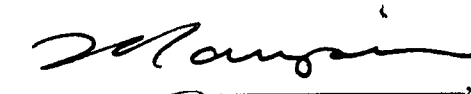
<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

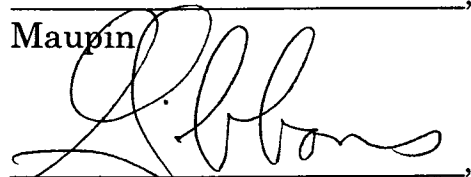
<sup>6</sup>See NRS 207.190(2)(a); NRS 205.222(2); NRS 193.130(2)(c).

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. John S. McGroarty, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk