

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT SANTANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent

No. 40880

FILED

SEP 09 2004

ORDER GRANTING LIMITED REHEARING

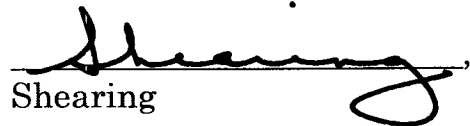
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

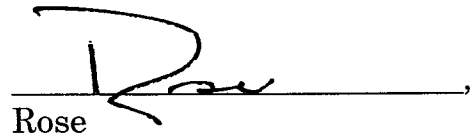
Upon further reflection, we conclude that Santana's petition for rehearing should be granted in part. Based upon the peculiar circumstances under which the offense in this case was committed, we conclude that imposition of a life sentence without the possibility of parole was excessive so as to constitute cruel and unusual punishment.¹ We therefore reverse the judgment of conviction in part and remand this matter for resentencing. On remand, the district court's discretion in its adjudication of Santana as a habitual criminal is only limited to the extent that it may not impose a sentence of life imprisonment without the possibility of parole.

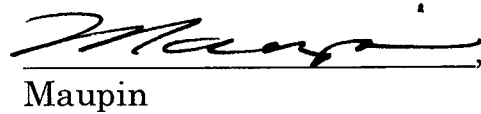
¹See Ewing v. California, 538 U.S. 11, 23 (2003) (plurality opinion recognizing that the Eighth Amendment "forbids only extreme sentences that are 'grossly disproportionate' to the crime") (quoting Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in judgment)); see also Solem v. Helm, 463 U.S. 277 (1983).

The petition for rehearing is denied in all other respects.
Accordingly, we hereby

ORDER this matter REVERSED in part and REMANDED for
further proceedings consistent with this order.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Eighth Judicial District Court Dept. 11, District Judge
JoNell Thomas
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk