IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY JIM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40910

FILED

FEB 12 2004

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 guilty plea, of one count of battery with the use of a deadly weapon. The district court sentenced appellant to a prison term of 48 to 120 months. The district court further ordered appellant to pay restitution in the amount of $2,025.62.

Appellant first contends that, because of the failures of trial counsel, his guilty plea was not voluntarily and knowingly entered, and is therefore invalid. However, this court has held that "a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."[1] In this case, at sentencing, appellant informed the district court that he wished to withdraw his plea, and the district court allowed appellant time to confer with his attorney. After the recess, appellant stated that he wished to proceed with sentencing. Because appellant did not actually bring a motion to withdraw his plea, the issue of the validity of his plea is not appropriately raised in this appeal.

[1]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

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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. 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.[2] 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.'"[3]

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] 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."[5]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant

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

[3]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).

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

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

statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[6] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they are either inappropriate for review on direct appeal or without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Matthew J. Stermitz
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk

[6]See NRS 200.481(2)(e)(1).