

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO FUENTES IBARRA A/K/A  
FRANCISCO YBARRA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41022

FILED

AUG 29 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 jury verdict, of one count of burglary. The district court sentenced appellant to serve a prison term of 48 to 120 months.

Appellant's sole contention is that the district court abused its discretion at sentencing by relying on impalpable evidence. In particular, appellant claims that, in refusing to grant appellant's requested sentence of time served,<sup>1</sup> the district court essentially punished appellant for the murder charges of which he had been acquitted. We conclude that appellant's contention is without merit.

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

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<sup>1</sup>At the time of sentencing, appellant had spent approximately two years in custody.

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

suspect evidence."<sup>3</sup> Moreover, 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>4</sup>

In the instant case, we note that appellant does not allege the relevant statute is unconstitutional, and the sentence imposed was within the parameters provided by the relevant statute.<sup>5</sup> Moreover, the record of the sentencing hearing belies appellant's claim that the district court relied on impalpable evidence by punishing him for the two charged murders for which he had been acquitted. At sentencing, the district court expressly stated:

There are certain rules and laws that govern the imposition of sentence, and although I can consider all the relevant facts, I cannot punish you for those facts, okay. I cannot punish you, notwithstanding your counsel's position, for being acquitted, okay. That would be totally wrong. All right. You were charged in a capital case. You were acquitted. I mean that is a singular occurrence in this country, all right. That happened to you, okay. As far as this Court is concerned, that is gone. That is no longer a consideration.

The district court then set forth its justification for not granting appellant's sentencing request, explaining that it had determined that a

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<sup>3</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


<sup>4</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>5</sup>See NRS 205.060(2) (providing for a prison term of 1 to 10 years).


harsher sentence was warranted based on the unusual facts and circumstances of the burglary, as well as appellant's background.<sup>6</sup> Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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. Jerome Polaha, District Judge  
Kenneth J. McKenna  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>6</sup>Appellant entered the scene of a double murder and stole the valuables of his murdered friend in order to pay off a drug debt the deceased friend allegedly owed.