IN THE SUPREME COURT OF THE STATE OF NEVADA

USMAN ANUKU SADIQ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41255

FILED

AUG 2 0 2003

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 voluntary manslaughter with the use of a deadly weapon (count I) and battery with the use of a deadly weapon (count II). The district court sentenced appellant to serve two consecutive prison terms of 36 to 120 months for count I and a concurrent prison term of 24 to 96 months for count II.

Appellant's sole contention is that the district court abused its discretion at sentencing because the sentence imposed for count I is too harsh.[1] In particular, appellant contends that the sentence was grossly disproportionate to the crime because: (1) appellant was young and did not have a criminal record; and (2) the victims in this case were the initial

[1]On June 13, 2003, appellant filed a notice of error and motion to file an amended fast track statement. Good cause appearing, we grant the motion and direct the clerk of this court to file the amended fast track statement.

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aggressors.[2] We conclude that the district court did not abuse its discretion at sentencing, and that the sentence was not disproportionate to the crime.

This court has consistently afforded the district court wide discretion in its sentencing decision.[3] 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."[4] 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.[5]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence, that the relevant statutes are unconstitutional, or that the sentence imposed exceeded the

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[2]After appellant tried to break up a fight between the victims and other individuals, one of the victims rammed his car into appellant's mother's vehicle, ran over appellant's foot with his car, and then ran over appellant's friend with his vehicle severely injuring him.

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

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

[5]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)).

parameters provided by the relevant statutes.[6] Further, we conclude that the sentence is not so unreasonably disproportionate to the crime as to shock the conscience; in pleading guilty to the charged offenses, appellant admitted that he bludgeoned the two victims in the head with a brick, killing one and severely injuring the other. Although, at sentencing, appellant presented evidence that the victims were the initial aggressors, the district court clearly considered that mitigating factor before imposing sentence, explaining:

> Voluntary manslaughter is a heat of passion type thing and not one of us until we are put in the position that [appellant] was put in, not one of us really knows what we would do if we were run over and our dear friend actually went under a vehicle and was being drug by a vehicle. We don't know what we would do in that situation. By the same token, two wrongs never make a right, and there does have to be a certain amount of punishment . . .

Accordingly, we conclude that the district court did not abuse its discretion at sentencing.[7]

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[6]See NRS 200.080 (providing for a prison term of 1 to 10 years); NRS 193.165(1) (providing for an equal and consecutive prison term for the use of a deadly weapon); NRS 200.481(2)(e)(1) (providing for a prison term of 2 to 10 years).

[7]We note that the district court ordered counts I and II to run concurrently, instead of consecutively, and that appellant received a substantial benefit in exchange for his guilty plea. Appellant was originally indicted for one count each of open murder with the use of a

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Special Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

. . . *continued*
deadly weapon, attempted murder with the use of a deadly weapon, and battery with the use of a deadly weapon resulting in substantial bodily harm.