IN THE SUPREME COURT OF THE STATE OF NEVADA

ANSELL MATRIA JORDAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41414

FILED

JUL 0 1 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of sexual assault on a child. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years. The district court further imposed a special sentence of lifetime supervision upon completion of any term of probation, parole, or imprisonment.

Appellant first contends that the evidence presented at trial was insufficient to support the jury's findings of guilt on the sexual assault charge. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1] In particular, at trial the minor victim testified that appellant had previously made statements to her indicating he would like to engage in sexual acts with her, and that while she was attempting to fall asleep, appellant turned her over, pinned her down, and digitally penetrated her against her will. Examining nurse Debra Robison testified

[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

that she found abrasions in the victim's genital area, and that the injuries were consistent with the victim's version of the events. Moreover, criminalist Jeffrey Rolands testified that swabs taken from appellant indicated that DNA consistent with the victim's profile was on appellant's hands. Additionally, witnesses Kimberlee Girlie and Devin Goodwin both testified that they had heard a muffled cry in the middle of the night and encountered the victim running into their bedroom, crying hysterically, immediately after the incident. It is for the jury to determine the weight and credibility to give testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[2] The jury could have reasonably inferred from the evidence presented that appellant sexually assaulted the victim. Accordingly, we reject appellant's challenge to the sufficiency of the evidence supporting his conviction.

Appellant next contends that the district court abused its discretion when, at the urging of the prosecution, it considered appellant's recent acquittal on a similar offense in determining appellant's sentence. We conclude that appellant's contention lacks merit.

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

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[2]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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

suspect evidence."[4] "Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional."[5]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Moreover, appellant has failed to demonstrate that the district court considered any objectionable material in determining appellant's sentence.[6] Here, the State did not imply that appellant was in fact guilty of criminal charges of which he had been acquitted. In any event, a sentencing court may consider a defendant's past criminal history, including charges of which the defendant has been acquitted.[7] Finally, we note that the sentence imposed was within the parameters provided by the relevant statute[8] and was not so unreasonably disproportionate to the crime as to shock the conscience. Accordingly, the

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

[5]Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995), abrogated on other grounds by Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000).

[6]See Silks, 92 Nev. at 94, 545 P.2d at 1161 (citing United States v. Weston, 448 F.2d 626, 633 (9th Cir. 1971)).

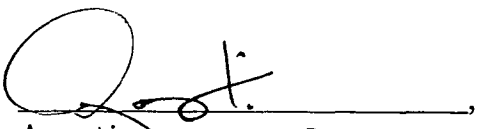
[7]See, e.g., United States v. Watts, 519 U.S. 148 (1997) (under federal sentencing guidelines, a sentencing court may consider conduct for which the defendant was acquitted); United States v. Sweig, 454 F.2d 181 (2d Cir. 1972); Brakes v. State, 796 P.2d 1368, 1372-73 (Alaska 1990); State v. Mason, 82 P.3d 903, 908 (Mont. 2003); State v. Arredondo, 674 N.W.2d 647, 663 (Wis. 2003).

[8]See NRS 200.366.

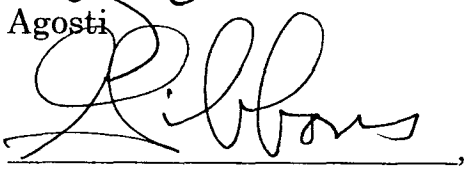
district court did not abuse its discretion at sentencing. Having concluded that appellant's contentions are without merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Becker



_____, J.
Agosti



_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk