

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN LEE WHITTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41421

FILED

AUG 19 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 guilty plea, of possession of a stolen motor vehicle. The district court sentenced appellant Benjamin Lee Whitton to serve a prison term of 24 to 60 months to run consecutively to the sentence imposed in district court case No. CR01-2561.

Whitton contends that the district court abused its discretion at sentencing by refusing to run the sentence imposed in this case concurrently to the sentence imposed in district court case No. CR01-2561. Specifically, Whitton contends that "given the stipulated sentencing recommendation of the parties and the like recommendation of the Division of Parole and Probation, the sentence imposed by the [district court] was less the product of [its] discretion and more an abdication to the wishes of the parties and the Division."<sup>1</sup> Citing the dissent in Tanksley v. State,<sup>2</sup> Whitton asks this court to review the sentence and remand this

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<sup>1</sup>Pursuant to plea negotiations reached to resolve three separate criminal cases, the State and Whitton agreed to a joint sentencing recommendation of a prison term of 2 to 5 years in two of the cases to run consecutively and the State agreed to dismiss the third case.

<sup>2</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

case to the district court so that “the possibility of concurrent sentencing [can be] explored more fully.” We conclude that the district court did not abuse its discretion in imposing consecutive sentences.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</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 suspect evidence.”<sup>4</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>5</sup>

In the instant case, Whitton does not allege that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>6</sup> Moreover, it is within the district court’s discretion to impose consecutive sentences.<sup>7</sup> Finally, the district court did not abdicate

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<sup>3</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>5</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)).

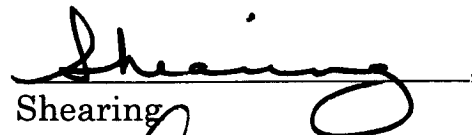
<sup>6</sup>See NRS 205.273(3); NRS 193.130(2)(c) (providing for a prison sentence of 1 to 5 years).


<sup>7</sup>See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

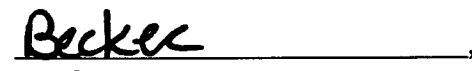
its sentencing discretion in ordering the sentence to run consecutively, but instead decided to follow the recommendation of the parties after hearing arguments from counsel and Whitton's statement of allocution. Accordingly, the district court did not abuse its discretion at sentencing.

Having considered Whitton's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, J.  
Shearing

 \_\_\_\_\_, J.  
Leavitt

 \_\_\_\_\_, J.  
Becker

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