

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS CHRISTOPHER MULVANEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41515

**FILED**

NOV 21 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order revoking appellant Thomas Christopher Mulvaney's probation.

On April 16, 2002, Mulvaney was convicted, pursuant to a guilty plea, of one count of grand larceny. The district court sentenced Mulvaney to serve a prison term of 18 to 48 months, and then suspended execution of the sentence, placing Mulvaney on probation for a time period not to exceed 5 years.

On August 27, 2002, the Division of Parole and Probation filed a violation report against Mulvaney, alleging numerous violations of the conditions of probation. After conducting an evidentiary hearing, the district court entered an order revoking Mulvaney's probation. Mulvaney filed this timely appeal from the district court order revoking his probation.

Mulvaney contends that the sentence imposed constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions.<sup>1</sup>

Preliminarily, we note that Mulvaney has waived his right to challenge the severity of his sentence by failing to pursue the matter in a direct appeal from the judgment of conviction.<sup>2</sup> Nonetheless, we have reviewed the record on appeal and conclude that the sentence imposed by the district court does not constitute cruel and unusual punishment.<sup>3</sup> Mulvaney does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional.<sup>4</sup> Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>5</sup> Finally, the sentence

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<sup>1</sup>Mulvaney primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

<sup>2</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (holding that "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

<sup>3</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

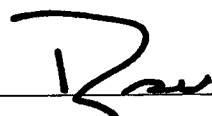
<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (recognizing that this court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence").

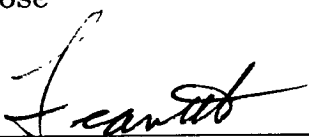
<sup>5</sup>See NRS 205.222(2); NRS 193.130(2)(c) (providing for a prison term of 1 to 5 years).

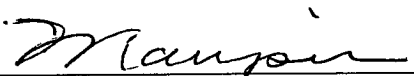
imposed is not so unreasonably disproportionate to the charged crime as to shock the conscience.<sup>6</sup>

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

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Michael P. Gibbons, District Judge  
Derrick M. Lopez  
Attorney General Brian Sandoval/Carson City  
Douglas County District Attorney/Minden  
Douglas County Clerk

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<sup>6</sup>Mulvaney pleaded guilty to grand larceny for stealing a snowboard from the Horizon Casino.