IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY JAMES WALLACE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41518

FILED

DEC 10 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 one count of gross misdemeanor conspiracy to possess marijuana. The district court sentenced appellant Ricky James Wallace to serve a jail term of 12 months.

Wallace contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is grossly disproportionate to the crime.[1] In particular, Wallace contends that, in 2001, the legislature evinced its belief that the sentence prescribed for first-offense possession of marijuana was too harsh when it amended NRS 453.336, reducing that offense from a category E felony punishable by a prison term of 1 to 4 years to a misdemeanor punishable by a $600.00 fine or rehabilitation.[2] We conclude that Wallace's sentence does not constitute cruel and unusual punishment.

[1]Wallace primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

[2]See 2001 Nev. Stat., ch. 592, § 37, at 3067-68; 1999 Nev. Stat., ch. 404, § 13, at 1917; NRS 453.336(4)(a); NRS 193.130(2)(e).

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[3] Regardless of its severity, a sentence that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[4]

This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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."[6]

In the instant case, Wallace does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[7] Finally, we

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[3]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

[4]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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

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

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

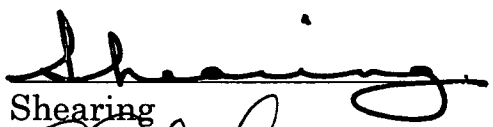
[7]See NRS 199.480(3); NRS 193.140 (providing for a jail term of not more than 1 year or by a fine of not more than $2,000.00).

conclude that the sentence is not so unreasonably disproportionate to the crime as to shock the conscience. Although the legislature reduced the penalty for possession of marijuana in 2001, that amendment did not apply to Wallace for two reasons: (1) the legislature clearly intended that amendment to apply prospectively;[8] and (2) Wallace was not sentenced pursuant to NRS 453.336, because he pleaded guilty to the crime of conspiracy, a violation of NRS 199.480(3). Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

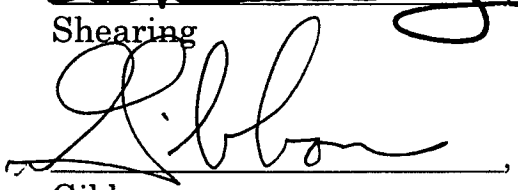
Having considered Wallace's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Becker



_____, J.
Shearing



_____, J.
Gibbons

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk

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[8]See 2001 Nev. Stat., ch. 592, § 49, at 3074 ("The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.").