

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY W. SCHWIETER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41552

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vs.
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FILED

MAR 11 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction, pursuant to guilty pleas, of three counts of burglary and one count of possession of stolen property. The district court sentenced appellant Gary W. Schwieter to serve three consecutive prison terms of 48 to 120 months for the burglary counts, and one concurrent prison term of 12 to 48 months for the stolen property count.

Schwieter first "seeks a modification of his sentence . . . requesting that the sentence imposed run concurrent with and not consecutive to each other." To the extent that Schwieter argues that the district court abused its discretion in imposing consecutive sentences, we conclude that Schwieter's contention lacks merit.¹

¹To the extent that Schwieter seeks to modify an illegal sentence to receive concurrent prison terms, we note that the sentences imposed were not facially illegal merely because the sentences were ordered to run consecutively. See NRS 176.555; Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

This court has consistently afforded the district court wide discretion in its sentencing decision.² 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."³ 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 to the charged offenses as to shock the conscience.⁴

In the instant case, Schwieter 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 sentences imposed were within the parameters provided by the relevant statutes.⁵ Moreover, it is within the district court's discretion to impose consecutive sentences.⁶ Finally, the sentences imposed are not so unreasonably disproportionate to the charged offenses as to shock the conscience.⁷ Accordingly, the district court did not abuse its discretion at sentencing.

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

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁴Blume 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)).

⁵See NRS 205.060(2); NRS 205.275; NRS 193.130(2)(c).

⁶See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

⁷Schwieter pleaded guilty to three counts of burglary for stealing numerous power tools from Home Depot and Lowe's, and pleaded guilty to possession of stolen property for possessing a bicycle stolen from the

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Schwieter, also for the first time on direct appeal, seeks to withdraw his guilty pleas. We decline to consider Schwieter's contention. Generally, this court will not consider a challenge to the validity of a guilty plea on direct appeal from the judgment of conviction, unless the defendant filed a presentence motion to withdraw the guilty plea in the district court.⁸ Because Schwieter did not file a motion to withdraw his guilty pleas prior to sentencing, we conclude that he must bring his challenge to the validity of his guilty pleas in the district court in the first instance.⁹

Having considered Schwieter's contentions and concluded that they either lack merit or are inappropriate for review on direct appeal, we

ORDER the judgments of conviction AFFIRMED.

Becker, J.

Becker

Agosti, J.

Agosti

Gibbons, J.

Gibbons

... continued

University of Nevada, Reno campus. At sentencing, the district attorney asked for maximum consecutive sentences, noting that in the last 15 years, Schwieter had accumulated 9 theft-related convictions, three of which were felonies, as well as 4 felony drug-related convictions.

⁸Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also NRS 177.045; Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984).

⁹See Bryant, 102 Nev. at 272, 721 P.2d at 368.

cc: Hon. Brent T. Adams, District Judge
Gary W. Schwieter
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk