

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS YNIGUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41592

**FILED**

**DEC 02 2003**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of felony domestic battery and burglary. The district court sentenced appellant Douglas Yniguez to serve a prison term of 24 to 60 months for the domestic battery count and a consecutive prison term of 36 to 96 months for the burglary count.

Yniguez's sole contention is that the district court abused its discretion at sentencing in refusing to grant concurrent sentences. Yniguez argues that the district court judge engaged in "name-calling," thereby demonstrating that he was biased against Yniguez. Citing to the dissent in Tanksley v. State,<sup>1</sup> Yniguez asks this court to review the sentence to see that justice was done. We conclude that Yniguez's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and 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

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<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

evidence.”<sup>2</sup> Regardless of its severity, 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>3</sup>

In the instant case, Yniguez 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, and the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience.<sup>4</sup> Moreover, the district court has discretion to impose consecutive sentences.<sup>5</sup> Finally, we conclude that Yniguez has failed to show that the district court based its sentencing decision on some form of improper bias. Although we do not condone name-calling, the transcripts of the sentencing hearing indicate that the district court based its sentencing decision, in part, on Yniguez's prior criminal history and the fact that Yniguez failed to accept responsibility for the crimes. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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<sup>2</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>3</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>4</sup>See NRS 200.485(1)(c); NRS 193.130(2)(c); NRS 205.060(2) (providing for a prison term of 1 to 5 years for the domestic battery count and a prison term of 1 to 10 years for the burglary count).

<sup>5</sup>NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.  
Becker

Shearing, J.  
Shearing

Gibbons, J.  
Gibbons

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