IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ROGELIO RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41696

FILED

NOV 0 5 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 attempted lewdness with a child under the age of fourteen years. The district court sentenced appellant to a prison term of 96 to 240 months.

Appellant contends that the district court abused its discretion at sentencing. Specifically, appellant argues that he was prejudiced by the State's use of uncharged, uncorroborated bad acts, and that the sentence imposed is too harsh. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[1] 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

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

suspect evidence."[2] As to appellant's first argument regarding the introduction of evidence of prior bad acts, we note that the evidence was actually introduced by appellant, who brought them in to show that other family members had accused appellant of sexual impropriety, but later recanted. Additionally, the district judge stated before pronouncing sentence that the sentence was based on the instant offense and not upon any previous allegations that had been made. Appellant has not, therefore, demonstrated that the sentence was based solely upon the district court's consideration of impalpable or highly suspect evidence.

As to appellant's second argument, 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.[3]

In the instant case, appellant 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 statute.[4]

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

[3]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)).

[4]See NRS 201.230; NRS 193.330(1)(a)(1).

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Shearing, J.
Shearing

Gibbons, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Law Office of David R. Houston
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk