IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BOYD THIESSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41770

FILED

DEC 23 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of sale of a controlled substance. The district court sentenced appellant to a prison term of 24 to 60 months.

Appellant first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1]

In particular, we note that a confidential informant testified that she purchased methamphetamine from appellant. The transaction was arranged by the informant with the assistance of law enforcement officials, who provided the buy money and followed the informant to the apartment complex where appellant lived. Although law enforcement officials did not observe the transaction, it was recorded on a digital audio recorder.

The jury could reasonably infer from the evidence presented that appellant sold methamphetamine to the confidential informant. It is for the jury to determine the weight and credibility to give conflicting

[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[2]

Appellant also contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.[3] We disagree.

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.[4] 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.'"[5]

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

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[2]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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

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

[5]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).

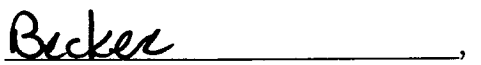
[6]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

accusations founded on facts supported only by impalpable or highly suspect evidence."[7]

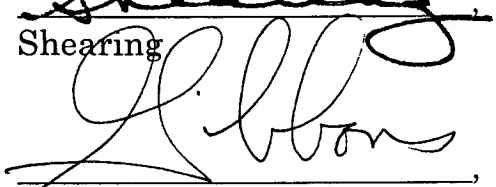
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[8] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


, J.
Becker


, J.
Shearing


, J.
Gibbons

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Brian Sandoval/Carson City
White Pine County District Attorney
White Pine County Clerk

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

[8]See NRS 453.321(2)(a).