IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMAN L. REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42180

FILED

MAY 06 2004

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 possession of a controlled substance. The district court sentenced appellant Herman L. Reed to serve a prison term of 12 to 48 months.

Reed first contends that the district court erred in denying his motion to suppress several incriminating statements he made to the arresting officer because they were given in violation of Miranda.[1] Relying on Floyd v. State,[2] Reed argues that the statements were made during the course of an interrogation because the arresting officer asked Reed questions that were reasonably likely to evoke an incriminating response. We conclude that Reed's contention lacks merit.

Statements made during the course of a custodial interrogation are inadmissible unless the defendant was informed of his

[1]Miranda v. Arizona, 384 U.S. 436 (1966).

[2]118 Nev. 156, 42 P.3d 249 (2002), cert. denied, 537 U.S. 1196 (2003).

Miranda rights and knowingly and voluntarily waived them.[3] Interrogation, for purposes of Miranda, is not just limited to police interviews but also includes "any words or actions that 'police should know [are] reasonably likely to evoke an incriminating response from a suspect.'"[4] However, "the requirements set forth in Miranda for custodial interrogations do not apply to volunteered utterances."[5]

In this case, the district court denied Reed's pretrial suppression motion, finding that his statements to police were spontaneously made outside the scope of a custodial interrogation. After reviewing the record on appeal, we conclude that the district court did not err in denying the motion to suppress.

Reed also contends that the sentence imposed by the district court is so disproportionate to the crime that it shocks the conscience and constitutes cruel and unusual punishment in violation of both the United States and Nevada Constitutions.[6] Citing to the dissent in Tanksley v. State[7] for support, Reed argues that this court should review the sentence to determine whether justice was done. We conclude that Reed's contention lacks merit.

---

[3]Id. at 171, 42 P.3d at 259.

[4]Id. (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)).

[5]Varner v. State, 97 Nev. 486, 488, 634 P.2d 1205, 1206 (1981).

[6]See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

[7]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[8] Further, 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 evidence."[9] 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 to the crime as to shock the conscience.[10]

In the instant case, Reed does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Moreover, we note that the sentence imposed was within the parameters provided by the relevant statutes, and the sentence is not so unreasonably disproportionate to the

---

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

[9]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

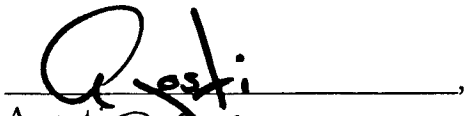
[10]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

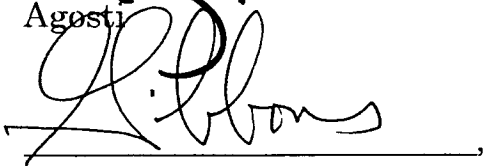
crime as to shock the conscience.[11] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Reed's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Nancy M. Saitta, District Judge
Carling & Whipple, LLC
Jonathan E. MacArthur
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

---

[11]See NRS 453.336(2)(b); NRS 193.130(2)(d).