

IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH L. SAVARESE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42184

FILED

MAR 25 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of obtaining money by false pretenses. The district court sentenced appellant Ralph L. Savarese to serve a prison term of 28-72 months plus an equal and consecutive prison term for the elderly enhancement for count I and a consecutive prison term of 28-72 months for count II, and ordered him to pay \$2,270.00 in restitution.

Savarese contends that the district court abused its discretion by imposing an excessive sentence. Citing to the dissent in Tanksley v. State<sup>1</sup> for support, Savarese argues that this court should review the sentence imposed by the district court to determine whether justice was done. Savarese claims that he was inappropriately punished for his “serious criminal history” by receiving consecutive sentences, and that the two victims did not suffer “a particularly large loss.” We conclude that Savarese’s contention is without merit.

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

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

crime.<sup>2</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</sup> The district court's discretion, however, is not limitless,<sup>4</sup> nevertheless, we 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."<sup>5</sup> Despite 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.<sup>6</sup>

In the instant case, Savarese cannot demonstrate that the district court relied on impalpable or highly suspect evidence, or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed was within the parameters provided by the relevant statutes.<sup>7</sup> We also note that Savarese received a substantial benefit by pleading guilty – in exchange for his guilty plea, the State agreed not to pursue

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<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>3</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


<sup>6</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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).


<sup>7</sup>NRS 205.380(1)(a) (category B felony providing for a sentence of 1-6 years); NRS 193.167(1)(i) (elderly enhancement).


habitual criminal adjudication despite Savarese's extensive criminal history, including numerous felony convictions spanning thirty-five years across, at least, five different states. Prior to sentencing Savarese, the district court heard the arguments of counsel, and both a statement made by a probation officer and Savarese. The district court stated that it was basing its decision on the presentence investigation report prepared by the Division of Parole and Probation which detailed Savarese's extensive criminal history, a letter to the court from Savarese, and the instant case file. Accordingly, based on the above, we conclude that the district court did not abuse its discretion at sentencing, and that the sentence imposed is not excessive or disproportionate to the crime.

Therefore, having considered Savarese's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk