

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAULIO LUIS SARTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42367

FILED

NOV 03 2004

ORDER AFFIRMING BUT REMANDING
FOR CORRECTION OF CLERICAL ERROR

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

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On October 17, 2003, the district court, pursuant to a guilty plea, convicted Sarti of nine felonies: first degree kidnapping with the use of a deadly weapon, burglary, robbery with the use of a deadly weapon, third degree arson, two counts of false imprisonment with the use of a deadly weapon, two counts of assault with the use of a deadly weapon, and battery with the use of a deadly weapon causing substantial bodily harm. The district court sentenced Sarti to prison terms of: two consecutive terms of life with the possibility of parole after five years for kidnapping with the use of a deadly weapon; a term of 48 to 120 months for burglary, to be served concurrently to the kidnapping sentence; two consecutive terms of 72 to 180 months for robbery with the use of a deadly weapon, to be served consecutively to the kidnapping sentence; a term of 12 to 36 months for arson, to be served consecutively to the robbery sentence; two concurrent terms of 24 to 72 months for false imprisonment to be served consecutively to the arson sentence; two consecutive terms of 12 to 48

months for assault, to be served consecutively to the false imprisonment sentence; and a term of 22 to 180 months for battery, to be served consecutively to the assault sentence.

Sarti contends that this court should review his sentences, not for an abuse of discretion by the district court, but to determine whether his sentences were appropriate considering that he had no prior criminal history and was only 18 at the time of the crimes, the crimes were an aberration of his character, he had severe problems with drugs and alcohol, and he had a difficult childhood. In making his argument, Sarti cites to the dissent in Tanksley v. State.¹ We reject Sarti's contention.

This court will not interfere with a sentence imposed by the district court "[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."² Even if a sentence seems severe, if it is within the statutory limits it is not cruel and unusual punishment when the statute itself is constitutional and the sentence is not so unreasonably disproportionate to the crime as to shock

¹113 Nev. 844, 850, 944 Nev. P.2d 240, 244 (1997) (Rose, J., dissenting).

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

the conscience.³ Moreover, whether to run a defendant's sentences consecutively or concurrently is within the sound discretion of the district court.⁴

Here, the district court did not rely on palpable or highly suspect evidence when sentencing Sarti, and the sentences are within the parameters provided by the relevant constitutional statutes.⁵ In addition, the sentences imposed are not so unreasonably disproportionate to the crime as to shock the conscience. Sarti was convicted of nine violent felonies involving multiple victims. The district court considered Sarti's mitigating evidence--his age, difficult youth, lack of a criminal history, and his drug and alcohol abuse--and concluded that Sarti's actions bordered on the worst that the district court had seen. Accordingly, we affirm the judgment of conviction and sentence.

We note, however, that the judgment of conviction appears to contain a clerical error. At the sentencing hearing, the district court sentenced Sarti to serve a term of 72 to 180 months on the count of battery with the use of a deadly weapon. The judgment of conviction, however,


³See 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)).

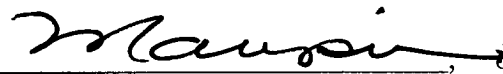
⁴See NRS 176.035(1); see also Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

⁵See NRS 200.310(1); 200.320(2)(a); 193.165; 205.060; 200.380; 205.020; 193.130(d); 200.460; 200.471(2)(b); 200.481(2)(e).

specifies a term of 22 to 180 months. NRS 200.481(2)(e) establishes a minimum term for this offense of not less than 2 years. Therefore, it appears that the judgment of conviction contains a clerical error in this respect. Accordingly, we

ORDER the judgment of the district court AFFIRMED, but we REMAND for correction of the judgment of conviction.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk