IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LEE WEIPPERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42425

FILED

APR 07 2004

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 third-offense driving under the influence. The district court sentenced appellant to a prison term of 12 to 48 months. The district court further ordered appellant to pay a fine in the amount of $2,000.00.

Appellant 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.[1] Specifically, appellant argues that the sentence in the instant case should have been ordered to run concurrent to the sentence imposed in a criminal case in Washoe County. 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.[2] Regardless of its severity, a

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

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

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.'"[3]

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] 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 suspect evidence."[5]

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.[6] Moreover, it is within the district court's discretion to impose consecutive sentences.[7] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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[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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

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

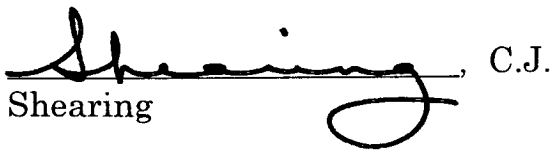
[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[6]See NRS 484.3792(1)(c).

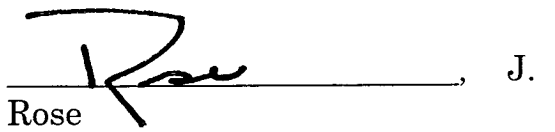
[7]See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

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

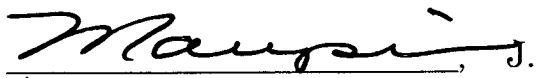
ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Shearing



_____, J.
Rose



_____, J.
Maupin

cc: Hon. Richard Wagner, District Judge
State Public Defender/Carson City
State Public Defender/Winnemucca
Attorney General Brian Sandoval/Carson City
Pershing County District Attorney
Pershing County Clerk