

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMIAH LEE HERR A/K/A JEREMY
LEE HERR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42439

FILED

MAR 24 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant Jeremiah Lee Herr to serve a prison term of 62-156 months, consecutive to any other sentence already imposed, and ordered him to pay \$344.00 in restitution.

Herr's sole contention is that the district court abused its discretion at sentencing. The extent of Herr's argument is: "Despite indications of Herr's remorse, the court sentenced him to sixty-two to 156 months. . . . This suggests an abuse of discretion." We disagree with Herr's contention.

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.¹ This court has consistently afforded the district court wide discretion in its sentencing decision.² The district court's discretion,

¹Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

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

however, is not limitless.³ 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.”⁴ 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.⁵

In the instant case, Herr does not allege that the district court relied on impalpable or highly suspect evidence, or argue that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed was within the parameters provided by the relevant statute.⁶ Additionally, we note that Herr received a substantial benefit by pleading guilty – in exchange for his guilty plea, the State agreed to dismiss additional charges, and not pursue habitual criminal adjudication based on Herr’s significant criminal history. Therefore, 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.

³Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁵Blume 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).

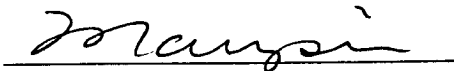
⁶NRS 200.380(2) (category B felony providing for a sentence of 2-15 years).

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

ORDER the judgment of conviction AFFIRMED.


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk