

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL GARY BEAVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42565

FILED

JUN 14 2004

ORDER OF AFFIRMANCE

JANETTE M. GLOOM
CLERK OF SUPREME COURT
BY *J. Rubark*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon constituting substantial bodily harm.¹ The district court sentenced appellant Michael Gary Beaver to serve a prison term of 4 to 15 years.

Beaver 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.² In particular, Beaver contends that the sentence imposed is too harsh given the fact that he did not intend to harm the victim and had no prior criminal history. 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.³ Regardless of its severity, a

¹In exchange for the guilty plea, the State dismissed one count of attempted murder with the use of a deadly weapon.

²Beaver primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

³Harmelin 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."⁴

This court has consistently afforded the district court wide discretion in its sentencing decision.⁵ 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."⁶

In the instant case, Beaver does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁷ Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense -- stabbing the victim with a knife resulting in the victim's permanent paralysis -- as to shock the conscience. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

⁴Blume 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).


⁵See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁷See NRS 200.481(2)(e)(2) (providing for a prison term of 2 to 15 years).

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

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Christiansen Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk