IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE E. BELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42569

FILED

DEC 01 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 two counts each of burglary and grand larceny. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. The district court adjudicated Bell a habitual criminal and sentenced him to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years for the burglary convictions and two concurrent terms of forty-eight to one hundred twenty months for the grand larceny convictions.

Bell first contends that the district court abused its discretion at sentencing by relying on hearsay statements made by the prosecutor. Specifically, Bell states that at sentencing the prosecutor informed the district court that a victim had told the prosecutor that all of the homes in her cul-de-sac were burglarized and the victim's house was the only one in which fingerprints were found. Bell further alleges that the prosecutor also informed the district court that a police identification technician told the prosecutor that the technician knew of two burglaries Bell committed

eight years ago that did not result in a conviction.[1] We conclude that Bell's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[2] "Few limitations are imposed on a judge's right to consider evidence in imposing a sentence, and courts are generally free to consider information extraneous to the pre-sentencing report. . . . Further, a sentencing proceeding is not a second trial, and the court is privileged to consider facts and circumstances that would not be admissible at trial."[3] However, "this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence."[4]

Even assuming that the prosecutor's statements at sentencing were impalpable, we conclude that the district court's sentence is not supported solely by reliance on those statements. There is no indication in the record that the district court relied on the challenged statements in imposing sentence.[5] We note that in addition to the instant offenses, Bell's

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[1]The transcript of the sentencing hearing reveals that the prosecutor actually stated that an identification technician told the prosecutor that he "remembered the defendant because he was the ID tech in one of the prior cases where the person had been hit – their house had been hit three different times and sustained a conviction."

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

[3]Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (citations omitted).

[4]Id.

[5]Cf. Norwood v. State, 112 Nev. 438, 439-40, 915 P.2d 277, 278-79 (1996) (district court abused discretion where court stated its belief, unsubstantiated by the record, that appellant was gang member and leader and court imposed harsher sentence to send message to appellant

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criminal history includes eight felony convictions spanning a period of twenty-seven years. These convictions were sufficient to support Bell's adjudication as a habitual criminal and the sentence imposed was within the parameters provided by the relevant statute.[6] Accordingly, the district court did not abuse its discretion at sentencing.

Bell next contends that his two consecutive life sentences as a habitual criminal are excessive and constitute cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentences are disproportionate to his past crimes, which were non-violent offenses. 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.[7] Regardless of its severity, a 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.'"[8]

. . . *continued*
and others like him); Goodson v. State, 98 Nev. 493, 654 P.2d 1006 (1982) (district court abused discretion when it rejected defendant's denial of unsubstantiated allegations and imposed sentence based upon those allegations).

[6]See NRS 207.010(1)(b)(2).

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

[8]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

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The district court has discretion to impose sentence under the habitual criminal statute and may dismiss a habitual criminal allegation where the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or justice.[9] The habitual criminal statute, however, "makes no special allowance for non-violent crimes or for the remoteness of [prior] convictions; instead, these are considerations within the discretion of the district court."[10] This court will look to the record as a whole to determine whether the district court abused its discretion in adjudicating an individual as a habitual criminal.[11]

In the instant case, Bell has not demonstrated that the district court abused its discretion in adjudicating him a habitual criminal. After considering the totality of the circumstances, the district court ruled that Bell was eligible for habitual criminal adjudication and found that it was proper to adjudge Bell a habitual criminal in light of his prior criminal history. Moreover, the sentence imposed was within the parameters provided by the relevant statute.[12] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

. . . continued
(1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[9]See NRS 207.010(2); Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000); Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

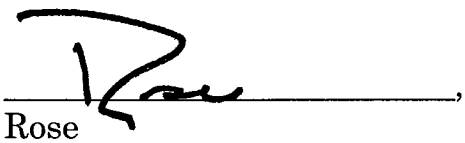
[10]Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

[11]See Hughes, 116 Nev. at 333, 996 P.2d at 893-94.

[12]See NRS 207.010(1)(b)(2).

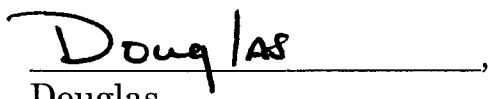
Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Rose

_____, J.
Maupin



_____, J.
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk