IN THE SUPREME COURT OF THE STATE OF NEVADA

MOISHA MIRACOLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42658

FILED

DEC 02 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 involuntary manslaughter. Third Judicial District Court, Churchill County; Archie E. Blake, Judge. The district court sentenced appellant Moisha Miracola to serve a prison term of 19 to 48 months.

Miracola contends that the district court abused its discretion because the sentence imposed is too harsh given the fact that he did not intend to injure anyone.[1] Additionally, Miracola alleges that the district court abused its discretion by imposing sentence based on conduct not related to the criminal charge, namely, the fact that he failed to appear at the scheduled trial. We conclude that Miracola's contentions lack merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and 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

[1]Miracola ran a stop sign, swerved to avoid an oncoming vehicle, and crashed into another vehicle. The victim, a passenger in Miracola's vehicle, died while being treated at the hospital for injuries sustained from blunt force trauma.

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evidence."[2] Regardless of 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.[3]

In the instant case, Miracola does not allege that the sentencing statutes are unconstitutional, and we note that the sentence imposed was within the parameters provided by the relevant statutes.[4] Moreover, we conclude that the sentencing court acted well within its discretion in considering the fact that Miracola had failed to appear at the trial on the involuntary manslaughter charge in determining whether Miracola was amenable to probation.[5] As we have previously stated, the sentencing court retains the discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant."[6] Finally, we conclude that the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience; although Miracola neither received probation as requested nor the minimum sentence as recommended by the

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[2]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[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)).

[4]See NRS 200.090; NRS 193.130(2)(d) (providing for a prison sentence of 1 to 4 years).

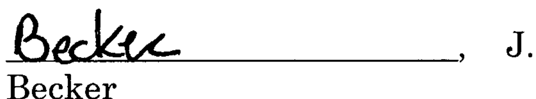
[5]See NRS 176A.100(1)(c); Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978).

[6]Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

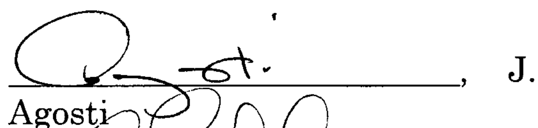
State, Miracola had a prior criminal history and the instant offense, although accidental, resulted in the death of the victim. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Miracola's contentions and concluded that they lack merit, we

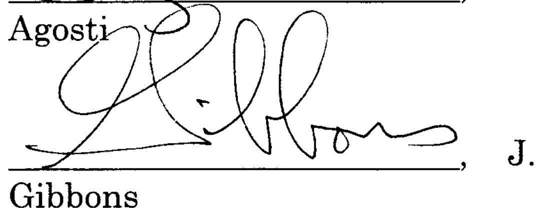
ORDER the judgment of conviction AFFIRMED.



_______________________, J.
Becker



_______________________, J.
Agosti



_______________________, J.
Gibbons

cc: Hon. Archie E. Blake, District Judge
Paul G. Yohey
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk