

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC NADELMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42673

FILED

MAY 12 2004

ORDER OF AFFIRMANCE

JANETTE 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 attempted grand larceny. The district court sentenced appellant Eric Nadelman to serve a prison term of 12-34 months to run consecutively to any sentence previously imposed for unrelated charges, and ordered him to pay \$320.00 in restitution.

Nadelman's sole contention on appeal is that the district court abused its discretion at sentencing. At his sentencing hearing, Nadelman requested that the sentence imposed be ordered to run concurrently with the sentence he was already serving, "so that he could begin attending to his [methamphetamine] addiction and enter a reputedly highly successful program for treatment." Nadelman claims that the district based its sentencing decision on an "assumption" proffered by the State that he committed the other offense (felony eluding a police officer) while he was awaiting sentencing on the instant case. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Nadelman argues that this court should review the sentence imposed by the district court to

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

²107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

determine whether justice was done. We conclude that Nadelman's contention is without merit.

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.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ The district court's discretion, however, is not limitless.⁵ 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."⁶ 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.⁷

In the instant case, Nadelman cannot demonstrate that the district court relied only on impalpable or highly suspect evidence, and he

³Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

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

⁵Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

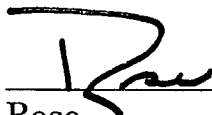
⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (emphasis added).

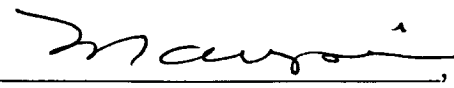
⁷Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

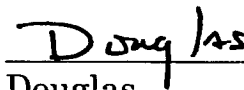
fails to even allege that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.⁸ Prior to sentencing Nadelman, the district court noted that the instant offense was “entirely a separate matter” and not related to the other offense. Moreover, it is within the discretion of the district court to impose consecutive sentences.⁹ Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Accordingly, having considered Nadelman’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁸See NRS 205.222(2); NRS 193.330(1)(a)(4) (attempt to commit a category C felony punishable as a category D felony); NRS 193.130(2)(d) (attempted grand larceny punishable by a prison term of 1-4 years).

⁹See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk