IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINN MARTIN MCCALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42708

FILED

AUG 18 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 felony count each of obtaining and/or using the personal identification information and uttering a forged instrument. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Quinn Martin McCall to serve two consecutive prison terms of 60-240 months and 18-48 months to run concurrently with the sentence imposed in district court case no. CR03-1364, and ordered him to pay $17,953.00 in restitution.

McCall's sole contention on appeal is that the district court abused its discretion by not following the plea agreement and sentencing him to no more than 2-7 years with all of the prison terms to run concurrently. McCall claims that the sentence imposed "seams [sic] excessive in the extreme, (and resembles more than a little the sentences recommended by the Division [of Parole and Probation])." Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, McCall argues that this court should review the sentence imposed by the district

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

court to determine whether justice was done. We conclude that McCall'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, McCall does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant

---

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

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

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

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

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

sentencing statutes are unconstitutional. In fact, McCall concedes that the sentence imposed was within the parameters provided by the relevant statutes.[8] We also note that it is within the discretion of the district court to impose consecutive sentences.[9]

Prior to sentencing McCall, the district court heard from both parties' counsel, McCall, a representative for the victims (McCall's brother-in-law), and a friend of McCall's speaking on his behalf in mitigation. The district court also heard from the Division of Parole and Probation, who explained that their recommendation was indeed "quite harsh," but that "[t]he Division stands by its recommendation" for the following reasons: (1) McCall had 5 arrests in 12 months "all related to fraud, theft or identity theft type of activities"; (2) two arrest warrants were issued from Florida for failure to appear for sentencing for unrelated crimes committed there; and (3) the victims of the instant offenses were family members trying to help McCall "get back on track." After sentencing McCall, the district court made the following statement:

> I have put the longest tail on this case because, as [one of the victims] indicates, this is what you have done, this is what you will do, you have become a predator on all humans who interact with you, and the drug methamphetamine has become your sole existence. It's my hope that with some programs, perhaps you can get out, all of the reports that have been before the Court indicate

---

[8]See NRS 205.463(1) (category B felony punishable by a prison term of 1-20 years); NRS 205.110; NRS 205.090; NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years).

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

> you are an extremely intelligent, talented person with the ability to be something other than a methamphetamine addict. I wish you every success, sir.

Accordingly, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk