

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WAYNE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42810

FILED

JUN 28 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribak*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant Michael Wayne Smith to serve a prison term of 35 to 120 months.

Smith contends that the sentence imposed constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is grossly disproportionate to the crime.¹ 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.² 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

¹Smith primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

²Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

the sentence is so unreasonably disproportionate to the offense as to shock the conscience."³

This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ 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."⁵

In the instant case, Smith does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁶ Finally, we conclude that the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience.⁷ Accordingly, we

³Blume 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).

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

⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁶See NRS 200.380(2) (providing for a prison term of 2 to 15 years).

⁷Smith was originally charged with robbery with the use of a deadly weapon for stealing the victim's wallet at gunpoint, an offense for which the State sought habitual criminal adjudication. Pursuant to the plea negotiations, the State agreed not to seek habitual criminal adjudication and dropped the deadly weapon enhancement.

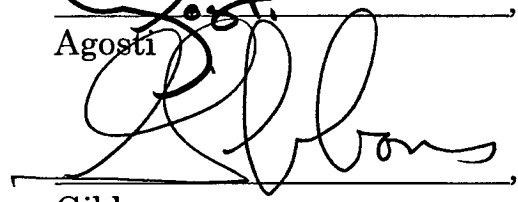
conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk