

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG HOUTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42836

FILED

JUL 13 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 battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Greg Houtz to serve a prison term of 24-60 months, and ordered him to pay \$59,411.21 in restitution.

Houtz's sole contention on appeal is that the district court abused its discretion at sentencing. Houtz claims that the district court based its sentencing decision solely on the admittedly substantial harm suffered by the victim, Houtz's brother, and the "vitriolic comments" made by the victim at the sentencing hearing. Houtz argues that the district court failed to consider: (1) the fact that he "had been acting under the dominion of a then-undiagnosed mental health problem" at the time of the offense; and (2) his actual criminal history, which included "three misdemeanor convictions and no prior felonies." At the sentencing hearing, Houtz asked the district court to suspend execution of the sentence and impose a term of probation so that he could receive the necessary mental health treatment. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Houtz contends that this court

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

should review the sentence imposed by the district court to determine whether justice was done. We conclude that Houtz'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

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

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

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In the instant case, Houtz cannot demonstrate that the district court relied only on impalpable or highly suspect evidence, and he 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 Additionally, the granting of probation is discretionary.⁹ At the sentencing hearing, the district court heard the arguments of counsel, and statements by both Houtz and the victim. Prior to sentencing Houtz, the district court expressly stated that it would base its sentencing decision on the information and criminal history contained in the presentence investigation report prepared by the Division of Parole and Probation, and would not consider "any reference to uncharged acts or dismissed acts." After announcing the sentence, the district court addressed Houtz as follows:

Mr. Houtz, I have given you the maximum sentence at law because of the egregious injuries perpetrated upon your brother. These pictures are very similar to ones that this Court has seen in attempted murder and murder cases. They were extraordinary injuries that regardless of the conflict that you and your brother had, were not warranted and the crime was appropriately charged, and the maximum sentence is appropriate in this case.

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

⁸See NRS 200.481(2)(b); NRS 193.130(2)(c) (category C felony punishable by a prison term of 1-5 years).

⁹See NRS 176A.100(1)(c).

I will also make an affirmative recommendation, Mr. Houtz, that you receive psychiatric treatment within the prison, if they have a treatment program available for you, and encourage you to pursue all treatment available to you so we do not see you back in the criminal justice system.

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

Having considered Houtz'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