

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON BROWN A/K/A DERRICK
DELEON VINCENT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47365

FILED

NOV 13 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted burglary. Eighth Judicial District Court, Clark County; Stephen L. Huffaker, Judge. The district court sentenced appellant Jason Brown to a prison term of 24-60 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed three years.

Brown's sole contention on appeal is that the district court abused its discretion at sentencing by imposing a sentence which constitutes cruel and unusual punishment in violation of the United States Constitution.¹ Brown claims that the sentence imposed was disproportionate to the crime, "shoplifting," and that "[h]e immediately took responsibility for his crime and pled guilty." We disagree with Brown's contention.

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

¹See U.S. Const. amend. VIII.

crime.² This court has consistently afforded the district court wide discretion in its sentencing decision.³ The district court's discretion, however, is not limitless.⁴ 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."⁵ Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁶

In the instant case, Brown does not allege that the district court relied on impalpable or highly suspect evidence or 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.⁷ Additionally, we note that the district court departed downward from the Division of Parole and Probation's recommendation for incarceration. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

³Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁴Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

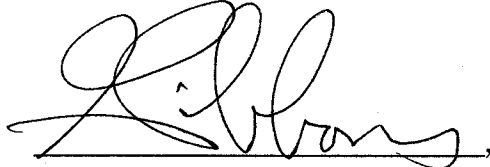
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

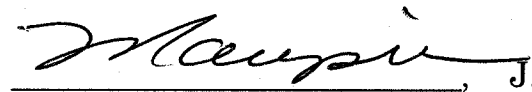
⁶Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

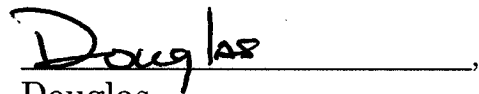
⁷See NRS 205.060(2); NRS 193.330(1)(a)(3); NRS 193.130(2)(c).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Eighth Judicial District Court Dept. 9, District Judge
Hon. Jennifer Togliatti, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk