IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGAR BUSTAMANTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56465

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a plea of guilty but mentally ill, of first-degree kidnapping and two counts of sexual assault. The district court sentenced appellant to serve two consecutive 10-to-life sentences and one concurrent sentence of 5-to-life. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant contends that the district court abused its discretion by imposing cruel and unusual punishment in violation of the United States and Nevada Constitutions considering his history of mental illness. We disagree.

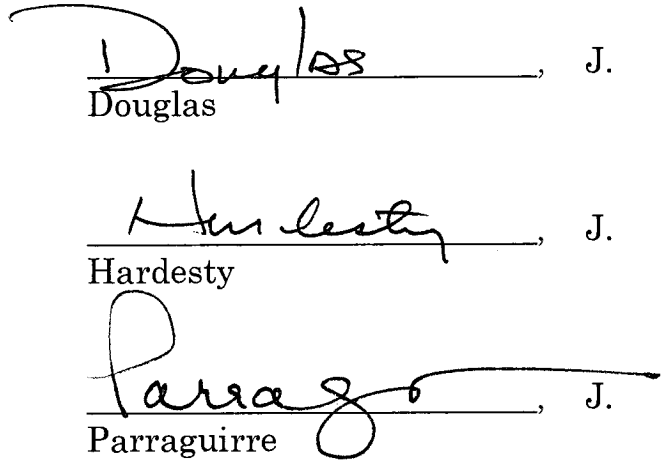
Regardless of its severity, a sentence that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 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).

Appellant has failed to demonstrate that his sentence constitutes cruel and unusual punishment. Appellant attacked, kidnapped, and twice sexually assaulted his victim. Appellant pleaded guilty but mentally ill to his serious crimes. While incarcerated he will receive medical and psychological treatment for his mental illness and be incarcerated outside of the general prison population. Appellant's sentence is within statutory limits and does not shock the conscience considering the severity of the offenses even with appellant's mental health issues.

To the extent appellant argues that the district court abused its discretion by not considering appellant's mental illness, the record does not bear that out. Defense counsel submitted a Sentencing Memorandum in Support of Plea of Guilty but Mentally Ill outlining appellant's mental health history. In addition, counsel informed the court of appellant's mental history during sentencing. In response, the district court found appellant mentally ill and ordered that he be separated from the general prison population and given "such treatment as is medically indicated for his mental illness." Based on the record, we conclude that the appellant failed to show that the district court abused its sentencing discretion. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (observing that this court has consistently afforded district courts wide sentencing discretion).

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

ORDER the judgment of conviction AFFIRMED.[1]



Douglas, J.

Hardesty, J.

Parraguirre, J.

cc: Hon. Jackie Glass, District Judge
Thomas A. Ericsson, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[1]To the extent appellant suggests that his guilty plea is invalid because the district court failed to consider appellant's mental illness when accepting the guilty plea, that claim is not appropriate for direct appeal. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986) (stating that a defendant may "not challenge the validity of the guilty plea on direct appeal from the judgment on conviction").