

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL C. SHURTLEFF, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63830

FILED

MAR 12 2014

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 guilty plea, of possession of a controlled substance for the purpose of sale. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Michael C. Shurtleff, Jr., claims that the district court abused its discretion at sentencing by relying on inaccuracies in the presentence investigation report (PSI) and imposing a sentence constituting cruel and unusual punishment. We disagree.

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.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). 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 *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991)

(plurality opinion) (explaining that the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime). And it is within the district court's discretion to impose consecutive sentences. *See* NRS 176.035(1); *Warden v. Peters*, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). *See generally Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . .").

The district court sentenced Shurtleff to a prison term of 19 to 48 months, to be served consecutively to a prison term Shurtleff is serving in Illinois. Although it is the maximum possible sentence, it is the sentence requested by Shurtleff, it is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d) (category D felony punishable by prison term of 1 to 4 years); NRS 453.337(2)(a) (possession of a controlled substance for the purpose of sale punishable as a category D felony), and Shurtleff does not allege that those statutes are unconstitutional. Further, it does not appear that the PSI contains any inaccuracies or that the district court relied on impalpable or suspect evidence when imposing sentence. At sentencing, Shurtleff's counsel stated that he had no changes to make to the PSI, but clarified that Shurtleff's six prior felonies were associated with only two sentences and it was a single probation violation that resulted in his probation being revoked in four cases. We are not convinced that the district court abused its discretion in imposing his sentence to run consecutive to his sentence in Illinois considering that the district court judge explained that he was imposing a consecutive sentence based on the sophistication of Shurtleff's drug operation and the impact such an operation has on the community.

Further, we are not convinced that the sentence imposed is so grossly disproportionate to the crime as to constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Patrick Flanagan, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk