IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT HENRY SEABROOK, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73747

ORDER OF AFFIRMANCE

Robert Henry Seabrook, Jr. appeals from a judgment of conviction, entered pursuant to an *Alford* plea[1], of theft. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Seabrook claims his sentence constitutes cruel and unusual punishment and the district court abused its discretion at sentencing by relying on highly suspect and impalpable evidence. Specifically, he claims the district court improperly found he knew and was complicit in his wife's embezzlement. He also claimed the district court demonstrated it was prejudiced against defendants accused of fraud and embezzlement schemes.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court "[s]o long as the record does not demonstrate prejudice resulting from consideration of

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

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 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 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).

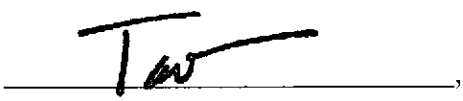
The sentence imposed is within the parameters provided by the relevant statutes, *see* 2007 Nev. Stat., ch. 215, § 4, at 683, and Seabrook does not allege that the statute is unconstitutional. Seabrook also fails to demonstrate the district court relied on impalpable or highly suspect evidence. Seabrook's *Alford* plea did not preclude the district court from considering and making its sentencing decision based on the conduct Seabrook was alleged to have committed. Further, Seabrook failed to demonstrate the district court was prejudiced against him when it expressed frustration at the Division of Parole and Probation's failure to recommend prison time for white-collar criminals.

We have considered the sentence and the crime and we conclude the sentence imposed is not grossly disproportionate to the crime and does

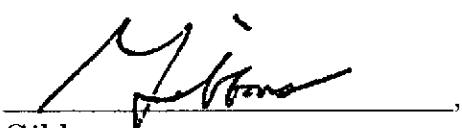
not constitute cruel and unusual punishment and the district court did not abuse its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
Brent D. Percival
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk