IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH KRIVAC,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37998

FILED

AUG 24 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve a maximum term of 180 months in prison with a minimum parole eligibility of 72 months.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States Constitution because the sentence is disproportionate to the crime. We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[1] 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.'"[2]

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

[2]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).

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Moreover, this court has consistently afforded the district court wide discretion in its sentencing decision.[3] Accordingly, 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."[4]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the district court reduced the sentence below the parameters provided by NRS 453.3385(3)[5] after finding that appellant had provided substantial assistance pursuant to NRS 453.3405.[6] Moreover, we conclude that the sentence imposed is not so grossly disproportionate to the offense as to shock the conscience. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Appellant next contends that the district court abused its discretion by refusing to suspend execution of the sentence and place appellant on probation. We disagree.

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[3]See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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

[5]NRS 453.3385(3) provides that the available sentences for level III trafficking are life in prison with the possibility of parole after 10 years, or a definite term of 25 years with a minimum parole eligibility of 10 years.

[6]NRS 453.3405(2) provides that the sentencing court may "reduce" the sentence of any person conviction of violating NRS 453.3385, if it "finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals or of any other person involved in trafficking in a controlled substance." The sentence imposed by the district court in this case is commensurate with that for level II trafficking. See NRS 453.3385(2).

NRS 453.3405 provides that the district court shall not suspend the sentence of a person convicted of violating NRS 453.3385 unless that person has rendered substantial assistance in the identification, arrest or conviction of any other individual involved in trafficking in a controlled substance. Where a person convicted of trafficking in a controlled substance has provided substantial assistance, the district court has discretion to reduce of suspend the sentence.[7]

Here, the district court reduced appellant's sentence based on his substantial assistance, but refused to suspend the sentence and place appellant on probation. The district court based that decision on appellant's "terrible criminal history" and the seriousness of the instant offense. The record indicates that appellant had eight prior felony convictions and was facing sentencing in California for possession of pseudoephedrine with the intent to manufacture methamphetamine when he committed the instant offense. After reviewing the record, we conclude that the district court did not abuse its discretion in refusing to suspend the sentence and place appellant on probation.

Finally, appellant argues that this case should be remanded for resentencing because the district court misunderstood its authority to impose the sentence in this case to be served concurrently with the pending California case and that this misunderstanding may have effected the sentence in this case. In particular, appellant suggests that the district court sought to give appellant an additional

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[7]See NRS 453.3405(2) (providing that judge "may reduce or suspend the sentence") (emphasis added); see also Matos v. State, 110 Nev. 834, 838, 878 P.2d 288, 290 (1994) ("Granting a sentence reduction under NRS 453.3405(2) is a discretionary function of the district court.").

benefit for his substantial assistance by imposing this sentence concurrently with the California case. Appellant reasons that if the district court knew that it lacked authority to impose the sentence concurrently because appellant had not yet been sentenced in California, the district court might have further reduced his sentence in the instant case. We conclude that this contention lacks merit.

The record indicates that the district court only intended the sentence in this case to be served concurrently with any California sentence that had already been imposed.[8] It does not appear that the court believed it had the authority to impose or intended to impose the sentence to be served concurrently with any sentences that had not yet been imposed in California. We therefore conclude that appellant is not entitled to relief on this claim of error.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Dennis A. Cameron
Washoe County Clerk

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[8]The district court commented, in relevant part: "this sentence will be run concurrent to any California sentence that you're under penalty for."