IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY ONTARI BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38063

FILED
SEP 05 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of escape. The district court adjudicated appellant a habitual criminal and sentenced appellant to a prison term of 60 to 180 months.

Appellant's sole contention is that the district court abused its discretion at sentencing by adjudicating appellant a habitual criminal. Specifically, appellant argues that he should not have been adjudicated a habitual criminal because all of his prior convictions were either for non-violent crimes[1] or were more than ten years old.[2] Appellant further argues that the sentence for being a habitual criminal is disproportionate to the underlying felony, escape. We disagree.

As to appellant's first argument, the district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the

[1]Two of appellant's five prior convictions were for attempted larceny from the person, and one was for attempted grand larceny. The remaining two convictions were for robbery.

[2]Three of appellant's five prior convictions occurred prior to 1991.

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interests of the statute or justice.[3] The habitual criminal statute, however, makes no special allowance for non-violent crimes or for the remoteness of the prior convictions; these are merely considerations within the discretion of the district court.[4] We conclude that, in light of appellant's five prior felony convictions, the district court did not abuse its discretion in adjudicating appellant as a habitual criminal.[5]

As to appellant's second argument, 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.[6] 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.'"[7]

This court has consistently afforded the district court wide discretion in its sentencing decision.[8] This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from

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[3]See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

[4]See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

[5]See Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996); Arajakis, 108 Nev. at 984, 843 P.2d at 805.

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

[7]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).

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

consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[9]

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 sentence imposed was within the parameters provided by the relevant statutes.[10] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

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

[10]See NRS 207.010(1)(a).