IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY YVONNE PEPPER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38341

FILED

NOV 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 guilty plea, of level three trafficking in a controlled substance. The district court sentenced appellant to a prison term of 72 to 240 months to run concurrent to a sentence imposed in another case.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.[1] Particularly, appellant argues that the sentence was disproportionate in light of appellant's rehabilitative efforts, the substantial assistance she gave to law enforcement, and the gravity of her offense. Appellant, an admitted drug addict, sold one ounce of methamphetamine to a confidential informant. Although appellant pleaded guilty, appellant insisted that the drugs sold belonged to her boyfriend and that appellant was only involved with the sale because her boyfriend was out of town. We conclude that the sentence imposed does not constitute cruel and unusual punishment.

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.[2] 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

[1]Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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

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the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[3] Here, the sentence imposed was less than the parameters provided by the relevant statutes in light of appellant's substantial assistance.[4] Because the sentence imposed did not exceed the statutory parameters, we conclude that it did not constitute cruel and unusual punishment.

Appellant also contends that the district court abused its discretion by relying on impalpable or highly suspect evidence. Specifically, appellant contends that the district court relied on evidence that it heard in a prior case involving appellant's son, who was the victim of molestation. In that case, the defense attorney accused appellant, who testified against the defendant, of being a bad mother who had allowed her son to be physically and sexually abused. We conclude that appellant's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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."[6]

In the instant case, the record reveals that the district court based its sentencing decision, in part, on appellant's prior criminal history. At allocution, appellant explained that she started using drugs again because her son was molested and that she requested probation so she could move to Arizona with her son, who was the victim of both physical

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[3]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).

[4]See NRS 453.3385(3) (providing for a prison term of either life with the possibility of parole after 10 years or a prison term of 25 years with parole eligibility after 10 years); NRS 453.3405 (providing that district court may suspend or reduce the sentence prescribed by statute where the court finds that a defendant rendered substantial assistance to law enforcement).

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

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

and sexual abuse. In response to the appellant's request for probation, the district court stated:

> I'm very familiar with the circumstances with regard to your son. And I think that was, you know, I'm very, very unhappy that your son had that experience that he had to go through. But we all take what happens in this life based upon our own actions. And your situation today is not the defendant's from yesterday's fault. That's not why your son was vulnerable and that's not why it happened and not why you used drugs and it's not why you sold.
>
> You had an opportunity through drug court, you had the best opportunity possible, and for whatever reason you hadn't hit the end of your rope.
>
> . . . .
>
> You need to get to the other side of this because of something that you find within yourself. To ask the court to give you mercy by way of probation is inappropriate. . . . You are not probatable [sic] at this point. You have proven that. You are unreliable.

Despite appellant's contention, there is no indication that the district court sentenced appellant based on evidence concerning her mothering abilities when it referenced appellant's son. In fact, the record reveals that the district court properly considered appellant's prior criminal history in rejecting appellant's request for probation. Accordingly, because the district court did not rely on impalpable or suspect evidence, we conclude that the district court did not abuse its discretion in sentencing.

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

ORDER the judgment of conviction AFFIRMED.

Young, J.

Agosti, J.

Leavitt, J.

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