IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN RAY JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41120

FILED

AUG 15 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny and one count of burglary. The district court sentenced appellant to a prison term of 12 to 36 months for grand larceny and a consecutive prison term of 16 to 60 months for burglary.

Appellant first contends that the district court abused its discretion at sentencing. Specifically, appellant argues that the district court relied on impalpable or highly suspect evidence because the district court thought that appellant did not have a job. At sentencing, defense counsel informed the court that appellant had made arrangements to live with appellant's brother in Ely and that appellant's brother was helping appellant find a job. There was no evidence, however, that appellant had actually secured a job and the district court therefore did not misapprehend the facts.

Appellant also argues that the district court misapprehended the law because the district court warned appellant that if appellant were to be convicted of another felony in the future, he would be subject to the habitual criminal statute. Appellant argues that his two convictions in the instant case could only be used as one conviction for purposes of the habitual criminal enhancement in the future. The district court, however, correctly stated the law.

"[W]here two or more convictions result from the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single prior conviction for purposes of the habitual criminal statute."[1] In the instant case, the grand larceny count was based on an incident on May 24, 2002, wherein appellant took items from a retail store, and the burglary count was based on an incident that occurred in September, 2001, when appellant entered a casino and passed two forged checks. Although the counts were charged in the same information, they were not based on the same act, transaction, or occurrence, and they are not required to be utilized as a single prior conviction for purposes of the habitual criminal statute. We conclude that the district court did not abuse its discretion at sentencing.

Appellant next contends that the prosecutor improperly shifted the burden of proof by arguing that there was "simply no evidence before the court that [appellant] has determined that stealing is not an appropriate way to pay one's bills." The prosecutor's comments were made at sentencing, after appellant had pleaded guilty. "It is a fundamental principle of criminal law that the State has the burden of proving the defendant guilty beyond a reasonable doubt and that the defendant is not obligated to take the stand or produce any evidence whatsoever."[2] Here, appellant had already admitted his guilt, and the prosecutor's comments did not, therefore, impermissibly shift the burden of proof. Rather, the comments were made in response to appellant's assertion that he had

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[1]Halbower v. State, 96 Nev. 210, 211-12, 606 P.2d 536, 537 (1980).

[2]Barron v. State, 105 Nev. 767, 778, 783 P.2d 444, 451 (1989).

learned that he did not want a life of crime and he should be placed on probation.

Finally, 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.[3] We disagree.

The Eighth Amendment of The United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[4] 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.'"[5]

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

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[3]See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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

[5]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).

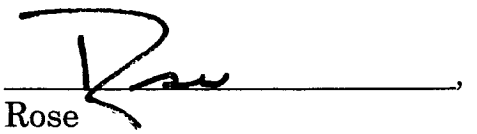
[6]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

accusations founded on facts supported only by impalpable or highly suspect evidence."[7]

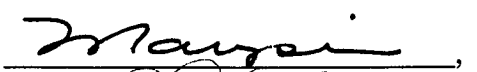
As previously discussed, appellant has not demonstrated that the district court relied on impalpable or highly suspect evidence, and appellant does not allege that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[8] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

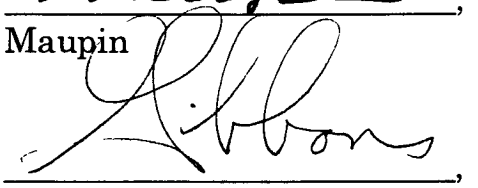
ORDER the judgment of conviction AFFIRMED.



_____, J.
Rose



_____, J.
Maupin



_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Brian Sandoval/Carson City
White Pine County District Attorney
White Pine County Clerk

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

[8]See NRS 205.222(2); NRS 193.130(2)(c); NRS 205.060(2).