

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3
4 WILLIAM JOSEPH McCaffrey,

5 Appellant,

6 v.

7 THE STATE OF NEVADA,

8 Respondent.

No. 54873

Electronically Filed
Mar 29 2010 04:09 p.m.
Tracie K. Lindeman

9 _____/
10 RESPONDENT'S ANSWERING BRIEF

11 JEREMY T. BOSLER
Public Defender

RICHARD A. GAMMICK
District Attorney

12 JOHN REESE PETTY
13 Chief Appellate Deputy
14 P.O. Box 30083
Reno, Nevada 89520-3083

GARY H. HATLESTAD
Chief Appellate Deputy
P.O. Box 30083
Reno, Nevada 89520-3083

15 ATTORNEYS FOR APPELLANT

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

I.	INTRODUCTION	1
II.	ISSUE ON APPEAL	2
III.	ARGUMENT	2
IV.	CONCLUSION	2

TABLE OF AUTHORITIES

Page

Lloyd v. State

94 Nev. 167, 576 P.2d 740 (1978) 2

Silks v. State

92 Nev. 91, 545 P.2d 1159 (1976) 2

Sims v. State

107 Nev. 438, 814 P.2d 63 (1991) 2

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3
4 WILLIAM JOSEPH McCaffrey,

No. 54873

5 Appellant,

6 v.

7 THE STATE OF NEVADA,

8 Respondent.

9 _____/
10 RESPONDENT'S ANSWERING BRIEF

11 I. INTRODUCTION

12 Appellant entered a negotiated plea to one count of promotion of sexual performance of a
13 minor. Pursuant to the plea bargain, the State, in exchange for Appellant's plea, agreed not to
14 pursue other charges, but would remain "free to argue" for the appropriate sentence. Appellant
15 would be eligible for probation if a psychosexual evaluation certified he was not a high risk to
16 reoffend.

17 Prior to sentencing, Steven Ing submitted his report, which indicated McCaffrey was not
18 a high risk to re-offend. JA, pp. 27, 29. The Department recommended a prison term of life with
19 parole after five years. *Id.*, p. 39. Defense counsel, citing a variety of mitigating circumstances,
20 argued for probation. The prosecutor argued in accord with the Department's recommendation.
21 *Id.*, p. 39. In salient part, the prosecutor argued that, because the police had little trouble
22 accessing child porn from McCaffrey's computer, his innocent acquisition of porn claim was not
23 worthy of belief; he also pointed to McCaffrey's lack of empathy, the uncharged offenses, his
24 concessions to photographing children at play, and finally, his cavalier admission that "[he] really
25 cannot predict the future" when the police questioned him about escalating his behavior from porn
26 to touching children. *Id.*, pp. 36-40.

1 Following the sentencing hearing, the District Judge imposed the life with parole after five
2 years sentence, plus assessments, fees and lifetime supervision. This appeal follows.

3 II. ISSUE ON APPEAL

4 Did the District Court err in imposing a sentence within the statutory range, not based on
5 suspect or highly impalpable evidence, and does not shock the conscience?

6 III. ARGUMENT

7 Appellant contends that the District Judge erred or otherwise abused his discretion in
8 imposing a prison sentence. This contention lacks merit.

9 The sentence imposed here is within the statutory range allowed for this offense. Moreover,
10 the sentence does not rest on suspect or highly impalpable evidence. *Silks v. State*, 92 Nev. 91, 545
11 P.2d 1159 (1976). In addition, Appellant's sentence does not shock the conscience. *Lloyd v. State*,
12 94 Nev. 167, 576 P.2d 740 (1978). Instead, the sentence imposed is in keeping with the District
13 Judge's perception of Appellant's just deserts, his prospects for rehabilitation, and the facts of this
14 case. *Sims v. State*, 107 Nev. 438, 814 P.2d 63 (1991). Accordingly, the present sentence should
15 be upheld.

16 IV. CONCLUSION

17 Based on the above arguments and points and authorities, the State respectfully urges the
18 Court to uphold McCaffrey's sentence.

19 DATED: March 29, 2010.

20 RICHARD A. GAMMICK
21 DISTRICT ATTORNEY

22 By: GARY H. HATLESTAD
23 Chief Appellate Deputy
24
25
26

1
2
3
4
5
6
7
8
9
0
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED: March 29, 2010.

3

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 11
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 21
- 2
- 3
- 4
- 5
- 6

JOHN REESE PETTY
Chief Appellate Deputy
Washoe County Public Defender's Office

Shelly Muckel
Washoe County District Attorney's Office