

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER LEROY ROACH

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Tracie K. Lindeman
Clerk of Supreme Court

CASE NO: 68011

FAST TRACK RESPONSE

Routing Statement: This appeal is appropriately assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because it is a direct appeal from a Judgment of Conviction that challenges only the sentence imposed and is based on a guilty plea.

- 1. Name of party filing this fast track response:** The State of Nevada
- 2. Name, law firm, address, and telephone number of attorney submitting this fast track response:**
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- 3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:**
Same as (2) above.
- 4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal:** None.
- 5. Procedural history.**

On September 22, 2014, the State filed an Information against Appellant Christopher Leroy Roach (hereinafter "Roach") charging him with Count 1:

Conspiracy to Commit Robbery (Category B Felony NRS – 200.380, 199.480), Count 2: Robbery with use of a Deadly Weapon (Category B Felony – NRS 200.380, 199.480), Count 3: Coercion (Category B Felony – NRS 207.190), Count 4: Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480), Count 5: Robbery (Category B Felony – NRS 200.380), Count 6: Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480), Count 7: Robbery with use of a Deadly Weapon (Category B Felony – NRS 200.380, 199.480), and Count 8: Possession of Stolen Property (Category C Felony – NRS 205.275). AA 5-10.

On March 11, 2015, Roach pleaded guilty to Count 1: Robbery with Use of a Deadly Weapon and Count 2: Conspiracy to Commit Robbery. AA 27-35. On May 6, 2015, the district court sentenced Roach as to Count 1: 60 to 180 months, plus a consecutive term of 60 to 180 months for the deadly weapon enhancement and as to Count 2: 13 to 60 months, Count 2 to run consecutive with Count 1. AA 48. The Judgment of Conviction was filed on May 12, 2015. AA 51. Roach filed his Notice of Appeal on May 12, 2015. AA 53.

6. Statement of Facts.

On June 30, 2014, Baylie Kull was walking home from work when she was approached by Roach and his co-defendants who were asking for directions. AA 39. Kull was on her cellphone when one of the men grabbed her arm and took her

cell phone. Id. Roach and his co-defendants then walked her to an overpass and pushed her up against a fence. Id. They stole her fanny pack which contained all of her personal items and forced her to give them her pin numbers and pass codes to her cell phone and credit and debit cards. Id. During this time, one of the men had a gun and told her not to scream or fight with them, or else they would shoot her. Id.

After taking all of Kull's personal property, they searched under her clothes including over her breasts to see if there was anything else left to take. Id. Then they forced Kull to walk into an entryway of a building and told her not to turn around so that they could flee. Id.

Not even twenty-four hours after that, Eola Robinson was walking home when Roach and his co-defendants approached her. AA 39-40. One of the men put his hands over her eyes and his other arm around her neck. AA 40. Again, they threatened to shoot her unless she gives them her purse. Id.

On that same day, Roach and his co-defendants attacked again. Id. Donna Dimaria and Jesus Medina were just sitting in their car talking when they saw Roach and his co-defendants loitering around. Id. Dimaria said bye to her boyfriend, Medina, and he got out of the car. Id. Dimaria locked her car and attempted to drive away; but then she saw one of the men pointing a gun at Medina's head. Id. Roach and his co-defendants approached Dimaria's car and forced their way inside. Id. The men forced Dimaria to keep her head down by putting a hand on the back of her

neck and squeezing while telling her to hand her possessions over. Id. Medina was forced into the back of the car and told to hand over his necklace. AA 41. After taking all of Medina's and Dimaria's property, Roach and his co-defendants fled the scene. Id.

The police were able to apprehend Roach and his co-defendants because of a Find My iPhone App. Id.

7. Issue on appeal.

Whether the district court's sentence, which is within the sentencing range, constitutes cruel and unusual punishment.

8. Legal Argument, including authorities:

THE DISTRICT COURT'S SENTENCE, WHICH IS WITHIN THE SENTENCING RANGE, DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT.

The Eighth Amendment to the United States Constitution as well as Article 1, Section 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The Eighth Amendment and Nevada Constitution do not require the sentence to be strictly proportionate to the crime; they only forbid a sentence that is grossly disproportionate to the crime. Chavez v. State, 125 Nev. 328, 347-348, 213 P.3d 476, 489 (2009) (*citing* Harmelin v. Michigan, 501 U.S. 957, 1001, 111 S. Ct. 2680, 2705 (1991) (plurality opinion)). A statute within the statutory limits is "not considered cruel and unusual punishment unless (1) the statute fixing punishment is

unconstitutional or (2) the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” Id.

Additionally, the district court has wide discretion when sentencing. Id., 213 P.3d at 490. The Court will not interfere with an imposed sentence unless the record shows prejudice from facts based on “impalpable or highly suspect evidence.” Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The sentence should not be overruled absent an abuse of discretion. Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Further, the sentencing judge may consider a variety of information to ensure “the punishment fits not only the crime, but also the individual defendant.” Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

Here, Roach’s sentence for Robbery With Use of a Deadly Weapon is within the statutory limits because Roach’s sentence of 60 to 180 months, plus a consecutive term of 60 to 180 months for the deadly weapon enhancement is within the statutory range of 24 to 180 months for robbery and the deadly weapon enhancement does not exceed the sentence imposed for the crime. NRS 200.380, 193.165. Moreover, Roach’s sentence for Conspiracy to Commit Robbery is within the statutory limits because Roach’s sentence of 13 to 60 months is within the statutory range of 12 to 27 months. NRS 199.480. First, Roach does not claim the statutes fixing his sentence is unconstitutional. Therefore, Roach was sentenced under a constitutional statute.

Second, the sentence is not so unreasonably disproportionate as to shock the conscience. Roach argues his sentence is disproportionate because he chose not to force the victims to relive their robbery experience at trial by taking a guilty plea. Roach also argues that the victims were not physically injured, he was only 22 years old at the time, had one prior felony conviction, likely not the person who planned the robberies, and suffers from depression causing him to attempt suicide multiple times. However, Roach failed to address whether his sentence is disproportional to the crime itself. Thus, a consideration of the crime is necessary.

Originally, Roach was charged with eight separate counts. AA 5-10. The events surrounding the eight counts consists of three separate robberies and four different victims. AA 41. Although Roach argues that his victims were uninjured, Roach displayed a gun in all three incidents and caused them to fear for their life. In the first and second robbery, Roach and his co-defendants stopped a female victim who was walking home at gun point to give them her belongings. AA 40. In the third robbery, Roach and his co-defendants robbed two more victims at gun point. Id. This was not one random incident where they made the wrong decision. This was three separate incidents where Roach decided to rob four different people while threatening them with a gun. Roach's actions show that he is a danger to this community.

Additionally, Roach was on probation when he committed this crime. AA 42. Although Roach argues he only had one prior felony conviction, the fact that he committed three separate robberies while on probation shows that he did not learn from his first conviction and continues to exhibit violent behavior.

Considering the crime itself and the individual defendant, Roach's sentence is not so unreasonably disproportionate as to shock the conscience. Therefore, Roach's sentence does not violate the Eighth Amendment to the US Constitution nor Article 1 Section 6 of the Nevada Constitution.

9. Preservation of the Issue.

Roach failed to object to his sentence below.

VERIFICATION

1. I hereby certify that this Fast Track Response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Fast Track Response has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point and Times New Roman style.
2. I further certify that this Fast Track Response complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is proportionately spaced, has a typeface of 14 points, contains 1,356 words and does not exceed 10 pages.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 9th day of September, 2015.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Ryan J. MacDonald*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 9, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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