

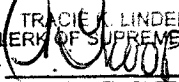
IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WESLEY CUSHMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53913

FILED

MAR 10 2010

TRACIE J. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant claims that the district court abused its discretion in sentencing him to a term of ten years to life under the large habitual offender statute when it could have given a lesser sentence. He contends his sentence constitutes cruel and unusual punishment as he accepted responsibility for his actions. We disagree. A sentence which conforms to the statutory prescriptions is constitutionally valid unless either the sentencing statute is unconstitutional or the sentence imposed is grossly disproportionate to the crime. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). Not only was the sentence within the statutory guidelines, but appellant acknowledged the possibility of the sentence he received in the plea agreement. See Etcheverry v. State, 107 Nev. 782, 786, 821 P.2d 350, 352 (1991).

Appellant raises no constitutional claim against the sentencing statute; and the sentence imposed is not disproportionate to the crime to which appellant pleaded guilty. Therefore, appellant fails to

establish that the district court abused its discretion in sentencing him on the grounds that his sentence is cruel and unusual.

Having considered appellant's claim and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk