

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN KIRSCHBAUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54353

FILED

JUL 15 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of conspiracy to commit burglary, burglary while in possession of a firearm, conspiracy to commit kidnapping, first-degree kidnapping, attempted first-degree kidnapping, conspiracy to commit robbery, two counts of robbery with the use of a deadly weapon, and possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant first argues that his guilty plea is invalid because it was not knowingly and voluntarily entered. We decline to consider this claim because, as a general rule, such claims must be presented to the district court in the first instance through a motion to withdraw the plea or a post-conviction petition for a writ of habeas corpus, Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), and appellant has not demonstrated that this case fits an exception to that rule, see Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994).

Appellant next contends that the sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. We disagree. 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.” 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)); accord Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). Appellant has not challenged the constitutionality of the sentencing statutes, and the sentences imposed are within the statutory limits. See NRS 193.140 (gross misdemeanors); NRS 193.330 (attempts); NRS 193.165 (deadly-weapon enhancement); NRS 199.480 (conspiracy); NRS 200.320 (first-degree kidnapping); NRS 200.380 (robbery); NRS 202.360 (ex-felon in possession); NRS 205.060 (burglary). And given the nature of the offenses and appellant’s criminal history, we conclude that the sentences imposed are not so unreasonably disproportionate to the offenses as to shock the conscience.

Having considered appellant’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Jackie Glass, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk