

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ANTHONY LEVELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54388

FILED

JAN 07 2010

TRACIE K. LINDEMAN
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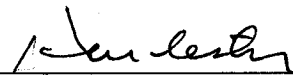
ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted sexual assault. Eighth Judicial District Court, Clark County; Michael Villani, Judge.


Appellant James Levels claims that the district court abused its discretion at sentencing and the sentence imposed constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions. U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. We will not disturb the district court's sentencing determination "absent a showing of abuse of discretion." Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The 96-240 month sentence imposed is within the statutory limits. NRS 193.330(1)(a)(1) (providing for a sentence of 2 to 20 years for an attempt to commit a category A felony); NRS 200.366(2) (sexual assault is punishable as a category A felony). Levels has not alleged that the sentencing statutes are unconstitutional, and we conclude that the sentence imposed is not grossly disproportionate to the offense for purposes of the constitutional prohibitions against cruel and unusual punishment. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality

opinion). In particular, Levels admitted that he attempted to sexually assault the victim. Finally, "the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Accordingly, we conclude that Levels failed to demonstrate that the district court abused its discretion at sentencing or that the sentence imposed constitutes cruel and unusual punishment, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

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