

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW BROWN A/K/A KENNETH
PETERSEN A/K/A MATTHEW
THOMAS SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55259

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingold*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of burglary, possession of a stolen vehicle, possession of burglary tools, and possession of a controlled substance. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Matthew Brown claims that his sentences constitute cruel and unusual punishment because they are disproportionate to his crimes. 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 district court sentenced Brown to a term of 12 months for the possession of burglary tools conviction and adjudicated Brown a habitual criminal and sentenced him to terms of 120 to 300 months on his remaining convictions. All sentences were imposed to run concurrently. The sentences are within the statutory limits, see NRS 205.080(1) (possession of burglary tools punishable as a gross misdemeanor); NRS 193.140 (punishment for gross misdemeanor); NRS 207.010(1)(b)(3) (punishment for habitual criminals), and Brown has not alleged that the sentencing statutes are

unconstitutional. We conclude that the sentences imposed are not grossly disproportionate to the offenses for purposes of the constitutional prohibitions against cruel and unusual punishment. See Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). In particular, Brown admitted committing the instant offenses and the district court was presented proof of at least nine of Brown's prior felony convictions. "[T]he 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 the district court did not abuse its discretion and the sentences imposed do not constitute cruel and unusual punishment, and we

ORDER the judgment of the conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk