

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ELLIOT IVEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55687

**FILED**

DEC 13 2010

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

ORDER AFFIRMING AND REMANDING

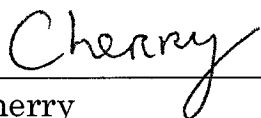
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery constituting domestic violence with substantial bodily harm. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

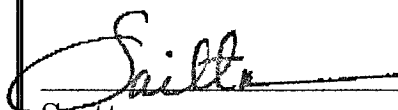
Appellant John Elliot Ivey contends that the district court abused its discretion by imposing a sentence constituting cruel and unusual punishment because it is disproportionate to the offense. See U.S. Const. amend. VIII. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Ivey has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Ivey received probation and his suspended prison term of 18-48 months falls within the parameters provided by statute. See NRS 200.485; NRS 193.130(2)(c) (category C felony). Further, Ivey's sentence is not "so unreasonably disproportionate to the offense as to shock the conscience." Culverson v. State, 95 Nev. 433, 435,


596 P.2d 220, 221-22 (1979); see also Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). Therefore, we conclude that the district court did not abuse its discretion and the sentence imposed does not constitute cruel and unusual punishment.

Finally, we note that the judgment of conviction contains an error and states that Ivey was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Therefore, we remand the matter to the district court for the entry of a corrected judgment of conviction following the issuance of the remittitur. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur). Accordingly, we

ORDER the judgment of conviction AFFIRMED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

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