

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEE STEPHENS A/K/A
ROBERT STEPHENS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56341

FILED

NOV 05 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 robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

First, appellant Robert Lee Stephens contends that the district court abused its discretion by imposing an excessive sentence constituting cruel and unusual punishment because it is disproportionate to the offense and his criminal history. See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. 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). Stephens has failed to demonstrate 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). The prison terms of 24-60 months, 48-120

months, and 48-120 months fall within the parameters provided by statute, NRS 200.380(2); NRS 199.480(1)(a); NRS 193.165(1)-(2), and are 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). Further, it was within the district court’s discretion to order them to run consecutively. See NRS 176.035(1). Therefore, we conclude that the district court did not abuse its discretion at sentencing and the sentence imposed does not constitute cruel and unusual punishment.

Second, Stephens contends that the district court violated NRS 193.165(1) and Mendoza-Lobos v. State, 125 Nev. ___, 218 P.3d 501 (2009), by (1) imposing the deadly weapon enhancement before stating its factual findings, (2) not finding any mitigating circumstances, (3) mischaracterizing his criminal history, and (4) not stating “what other relevant information that it considered in imposing what the District Court referred to as a ‘high consecutive sentence.’” As Stephens concedes, he did not object to the sufficiency of the district court’s findings or the imposition of the deadly weapon enhancement and we conclude that he has failed to demonstrate reversible plain error. See Puckett v. United States, 556 U.S. ___, 129 S. Ct. 1423, 1428-29 (2009); Mendoza-Lobos, 125 Nev. at ___, 218 P.3d at 507-08.

Having concluded that Stephens' contentions lack merit, we
ORDER the judgment of conviction AFFIRMED.¹

1 Hardesty, J.
Hardesty

1 Douglas, J.
Douglas

1 Pickering, J.
Pickering

cc: Hon. Jackie Glass, District Judge
Attorney General/Carson City
Clark County District Attorney
Eichhorn & Hoo LLC
Eighth District Court Clerk

¹No action will be taken on the proper person document submitted in this appeal. We note that Stephens may challenge the validity of his plea and raise claims of ineffective assistance of counsel in a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(a). We express no opinion as to whether Stephens may satisfy the procedural requirements of NRS chapter 34.