IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN LEE MONTGOMERY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57106

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen and one count of attempted lewdness with a child under the age of fourteen. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Brian Lee Montgomery's sole contention on appeal is that the district court imposed 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). Montgomery has failed to demonstrate that the district court relied on impalpable or highly suspect evidence and does not contend 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 life with the possibility of parole after ten years and 96-240 months fall within the parameters provided by statute, see NRS 201.230(2); NRS

193.330(1)(a)(1), 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 the sentences to run consecutively. See NRS 176.035(1). We conclude that the district court did not abuse its discretion at sentencing and the sentence imposed does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Douglas

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Janet S. Bessemer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk