

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY DEE PROCTOR A/K/A GARY P.  
PROCTOR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57123

**FILED**

**MAR 17 2011**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of one count of assault with a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

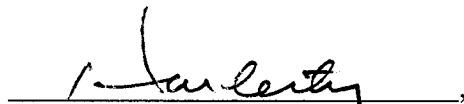
Appellant Gary Dee Proctor contends that his 5- to 12½-year prison sentence is disproportionate to the seriousness of his offense and constitutes cruel and unusual punishment. We review a district court's sentencing determination for abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Because Proctor does not argue that the habitual criminal punishment statute is unconstitutional, his sentence is within the parameters of that statute, and we are not convinced that the sentence is so grossly disproportionate to the gravity of the offense and Proctor's history of recidivism as to shock the conscience, we conclude that the sentence does not violate the constitutional proscriptions against cruel and unusual punishment. See NRS 207.010(1)(a); Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); 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); Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994). Accordingly, we


ORDER the judgment of conviction AFFIRMED.<sup>1</sup>



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



\_\_\_\_\_, J.  
Hardesty



\_\_\_\_\_, J.  
Parraguirre

cc: Hon. David B. Barker, District Judge  
Michael P. Printy  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>The clerk of this court shall file the proper person motion to dismiss counsel received on March 11, 2011. The motion is denied.