

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT RISSER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57438

FILED

JUL 15 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, pursuant to a guilty plea, of burglary. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

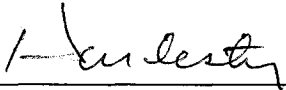
Appellant Robert Risser contends that the district court abused its discretion at sentencing and imposed a sentence constituting cruel and unusual punishment because the loss to the victim was financial in nature only and the presentence investigation report (PSI) contained inaccuracies regarding his criminal history. We disagree.

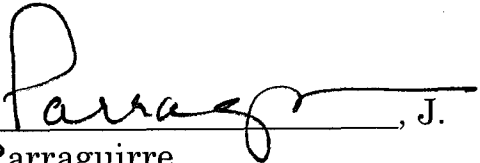
Risser's sentence of 10-25 years in prison is within the statutory limits, see NRS 207.010(1)(b)(3), he does not assert that the relevant statute is unconstitutional, and we conclude the sentence is not so disproportionate to the crime and Risser's criminal history "as to shock the conscience," Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (internal quotation marks omitted). It is within the district court's discretion to decline to adjudicate a defendant as a habitual criminal, see NRS 207.010(2); O'Neill v. State, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). And Risser has failed to demonstrate that the district court relied on "impalpable or highly suspect evidence," see Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976), because the district court did not rely on the

prior convictions challenged by Risser at the sentencing hearing and Risser does not specify what inconsistencies existed or provide this court with documentation regarding the alleged inconsistencies. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment and the district court did not abuse its discretion at sentencing, see Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk