IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO C. DURAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60083

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford plea, to burglary and attempted sexual assault. North Carolina v. Alford, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

The district court sentenced appellant Roberto Durand to a total of 96 to 240 months in prison with the counts running concurrently. Durand contends that his sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is so disproportionate to the crime that it shocks the conscience. We disagree.

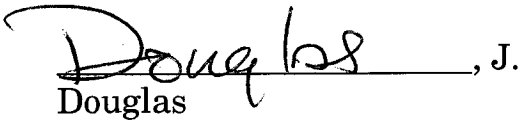
This court has consistently afforded the district court wide discretion in its sentencing decision and will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations

founded on facts supported only by impalpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

In the instant case, Durand does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Instead, Durand notes his cooperation with the police, lack of physical harm to either victim, and that he has a child who relies upon him for financial support, as indicators that his sentence is grossly disproportionate to the crimes for which he was convicted. We cannot agree. See Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (Kennedy, J., concurring in part and concurring in judgment). Further, while the sentence exceeded the Department of Parole and Probation's recommendation at sentencing, we note that it was within the parameters provided by the relevant statutes. See NRS 205.060(2) (burglary); NRS 193.330, 200.366 (attempt sexual assault). Accordingly, we conclude that

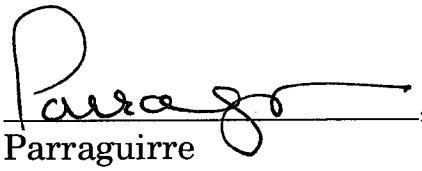
the sentence imposed does not constitute cruel and unusual punishment, and we

ORDER the judgment of conviction AFFIRMED.[1]



_____, J.
Douglas

_____, J.
Gibbons



_____, J.
Parraguirre

cc: Hon. Jerome T. Tao, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[1]We note that appellant's fast track statement is accompanied by a verification certifying that it complies with the formatting requirements of NRAP 32(a)(4). See NRAP 3C(e)(1)(A), (h)(1). The fast track statement, however, does not comply with NRAP 32(a)(4) because the margins are not "at least 1 inch on all four sides." We caution appellant's counsel that future submission of an incorrect verification may result in the imposition of sanctions. See NRAP 3C(n).