

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRA A. GAINES A/K/A ANTHONY  
RAY GAINES,  
Appellants,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61330

FILED

OCT 16 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

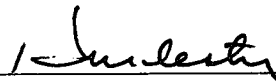
This is an appeal under NRAP 4(c) from a judgment of conviction, pursuant to an *Alford*<sup>1</sup> plea, of conspiracy to commit burglary, burglary, and grand larceny. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

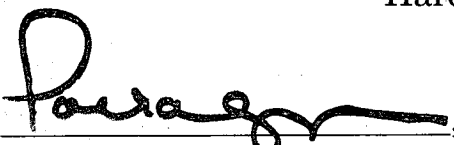
Appellant argues that his sentence constitutes cruel and unusual punishment under the United States and Nevada Constitutions because his current convictions and the convictions supporting his sentence under the habitual criminal statute, NRS 207.010, are non-violent. Regardless of its severity, a sentence that is 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 *Harmelin v.*

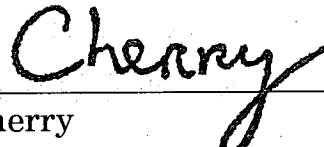
<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

*Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining that Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime). The sentence imposed is within the parameters provided by the relevant statute, see NRS 207.010(1)(b), and appellant does not allege that the statute is unconstitutional. Further, this court has consistently observed that “NRS 207.010 makes no special allowance for non-violent crimes”; rather, that is a consideration within the district court’s sentencing discretion. *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992); see *Tillema v. State*, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996). We are not convinced that the sentence imposed is so grossly disproportionate to the crime and appellant’s history of recidivism as to constitute cruel and unusual punishment. See *Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. James M. Bixler, District Judge  
Keith C. Brower  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk