IN THE SUPREME COURT OF THE STATE OF NEVADA

NORA JANE MORENO A/K/A NORA MORANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62726

FILED

NOV 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of first-degree kidnapping and two counts of child abuse and neglect with substantial bodily harm. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellant argues that her sentence—consecutive prison terms of 5 years to life for first-degree kidnapping and 8 to 20 years for each count of child abuse and neglect with substantial bodily harm—is grossly disproportionate to her crimes because her sentence exceeds one of the possible sentences for first-degree murder and is greater than sentences given to other defendants similarly situated and the district court relied upon impalpable or highly suspect evidence introduced by the State while ignoring her mitigation evidence. We disagree.

We have consistently afforded the district court wide discretion in its sentencing decision, *see, e.g.*, *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and will refrain from interfering with the sentence imposed by the district court "[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

13-34064

(1976). And, 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. 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). Further, the sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 200.320; NRS 200.508, and appellant does not allege that those statutes are unconstitutional.

We reject appellant's comparison of her sentence to possible sentences available for first-degree murder and other purportedly similarly situated defendants, as the Eighth Amendment does not require strict proportionality and her sentence is not grossly disproportionate to her crimes based on the limited record before us. Moreover, the kidnapping and child abuse charges to which appellant pleaded guilty covered a three-year period and involved significant bodily injury and pain to the victim. Further, appellant's claim that the district court ignored her mitigation evidence is belied by the record as the district court expressly accepted her representation that she had mental health and drug abuse problems. And upon hearing that appellant suffered sexual abuse as a child, the district court stated that it "accept[ed] the idea conceptually that there's a cycle of abuse." Finally, we reject appellant's contention that the district court relied on impalpable or highly suspect evidence in sentencing her. In this, she argues that the district court only relied on the parties' sentencing memoranda, neither of which contains objective facts, and

therefore the district court should have "reviewed the entire discovery contained within the Court's file and the voluntary statements of other witnesses."[1] The district allowed the parties to argue their respective positions concerning the facts of the crime and their proposed punishments before imposing sentence. And to the extent appellant suggests that the district court improperly considered facts related to dismissed charges, her plea agreement advised her that charges dismissed pursuant to agreement may be considered at sentencing. We conclude that nothing in the limited record before us suggests that the district court based its sentence on impalpable or suspect evidence.

Having considered the sentence and the crime, we are not convinced that the sentence imposed is so grossly disproportionate to the crime as to constitute cruel and unusual punishment or that the district court abused its discretion in its sentencing decision. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Gibbons

_____, J.
Douglas

_____, J.
Saitta

[1]To the extent appellant suggests that the presentence investigation report contains impalpable or highly suspect evidence, she did not include the report in the appendix or file a motion to have it transmitted as provided by NRAP 30(b)(6), and she does not identify any statement in it that is incorrect.

cc: Hon. Abbi Silver, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk