

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY KIRKLING, JR. A/K/A
JOHNNY EDWARD KIRKLING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63200

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an *Alford* plea, of attempted theft. *North Carolina v. Alford*, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant Johnny Kirkling, Jr., contends that the district court abused its discretion by imposing a sentence that “does not serve the interests of justice,” constituting cruel and unusual punishment. We disagree. This court will not disturb a district court’s sentencing determination absent an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Kirkling’s sentence of 12 to 34 months’ incarceration falls within the parameters provided by the relevant statutes, see NRS 193.130(2)(d) (providing a sentence of 1 to 4 years of imprisonment for category D felonies); NRS 193.330(1)(a)(4) (attempt to commit a category C felony punished as a category D felony); NRS 205.0835(3) (theft of property valued \$650 or more but less than \$3,500 constitutes a category C felony), and Kirkling does not allege that the district court relied solely on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional, see *Chavez v. State*, 125 Nev.

328, 348, 213 P.3d 476, 489-90 (2009). Moreover, we do not conclude that the sentence is so unreasonably disproportionate to the gravity of the offense as to shock the conscience. *See 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 the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

 Pickering , C. J.
Pickering

 Hardesty , J.
Hardesty

 Cherry , J.
Cherry

cc: Hon. Valorie J. Vega, District Judge
Keith C. Brower
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk