

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WAYNE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63332

FILED

JUN 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit burglary and burglary. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Michael Wayne Johnson was sentenced to a jail term of 12 months for conspiracy and a concurrent prison term of 33 to 84 months for burglary. Johnson claims that his prison term constitutes cruel and unusual punishment because it is unreasonably disproportionate to his nonviolent offense. However, Johnson does not claim that the relevant statutes are unconstitutional, *see Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996), his sentence falls within the parameters of those statutes, *see* NRS 193.140; NRS 199.480(3); NRS 205.060(2), and we are not convinced that the sentence is so grossly disproportionate to the gravity of the offenses as to shock the conscience, *see Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion); *Blume*, 112 Nev. at 475, 915 P.2d at 284. Accordingly, we conclude that Johnson's sentence does not violate the constitutional proscriptions against cruel and unusual punishment.

To the extent that Johnson also claims that the district court abused its discretion by imposing a greater sentence than the sentence

recommended by the Division of Parole and Probation, we conclude that his claim is without merit because a district court does not abuse its discretion by imposing a sentence in excess of that suggested by the Division. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972).

Having concluded that Johnson is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Hon. Douglas Smith, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk