IN THE SUPREME COURT OF THE STATE OF NEVADA

DEWAYNE FRANK RICHARDSON, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63508

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 larceny from the person not amounting to robbery with the use of a deadly weapon.[1] Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant argues that the district court erred by failing to state on the record that it had considered all of the factors enumerated in NRS 193.165 before imposing his sentence to the deadly weapon enhancement. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009). Because he failed to object below, we review this claim for plain error affecting his substantial rights. *See* NRS 178.602; *Mendoza-Lobos*, 125 Nev. at 644, 218 P.2d at 507. Although the district court did not strictly follow the statutory mandate, the record provides sufficient justification for the sentence. In particular, the district court was aware of the facts and circumstances of the crime, appellant's criminal history

[1]We note that the judgment of conviction appears to reflect that appellant pleaded guilty to attempted larceny from the person not amounting to robbery with the use of a deadly weapon; however, the record indicates that appellant pleaded guilty to larceny from the person not amounting to robbery with the use of a deadly weapon.

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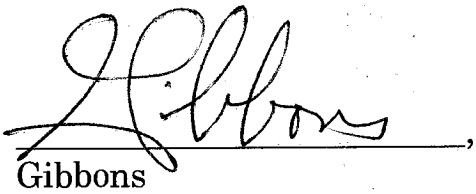
(including multiple felony convictions), and appellant's mitigation evidence; it does not appear from the record that any victim impact evidence was presented to the district court. *See* NRS 193.165(1). We conclude that appellant has failed to show that the district court's omission "had any bearing on [its] sentencing decision," *Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 508, and therefore he has not demonstrated any error affecting his substantial rights. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

Appellant next argues that the district court abused its discretion by sentencing him to an equal consecutive term in prison for the deadly weapon and running his sentence consecutive to that imposed in an unrelated misdemeanor conviction. 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 we 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 (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).

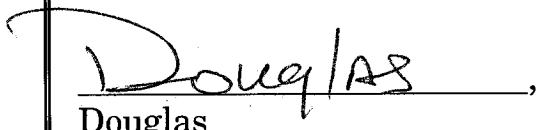
Appellant's sentence to two consecutive terms of 24 to 60 months in prison falls within the parameters provided by the relevant statutes, *see* NRS 193.130; NRS 193.165; NRS 205.270, and he does not allege that those statutes are unconstitutional. He also does not allege that the district court relied on impalpable or highly 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.

Having considered appellant's arguments and concluded that they lack merit, we

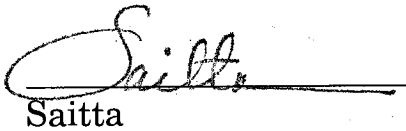
ORDER the judgment of conviction AFFIRMED.[2]



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Saitta

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[2]Despite counsel's verification that the fast track statement complies with applicable formatting requirements, it does not comply with NRAP 32(a)(4) because it is not double-spaced and NRAP 32(a)(5) because the typeface appears to be smaller than 14-point and the footnotes are not in the same size typeface as the body of the brief. *See* NRAP 3C(h)(1). We caution counsel that future failure to comply with the Nevada Rules of Appellate Procedure when filing briefs with this court may result in the imposition of sanctions. *See* NRAP 3C(n); NRAP 28.2(b).

cc: Hon. Brent T. Adams, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk