IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HAMLIN BESSETTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63567

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of coercion. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant argues that the district court was biased against him, as evidenced by its (1) description of appellant from the young victim's perspective as a "creepy old man" and comment that "my community is not safe" if appellant is not incarcerated, (2) focus on appellant's criminal history and the sexual nature of the charge, despite the absence of any reference to a specific sexual act in the charging document, and (3) interruption of appellant's statement of mitigating factors. We disagree. The sentencing transcript as a whole shows that the district court's comments were a reflection of the seriousness of the offense and the impact of appellant's crime on the six-year-old victim and do not indicate bias. *See Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) ("[R]emarks of a judge made in the context of a court

proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence."). And the nature of the offense and a defendant's criminal history are fitting considerations in fashioning an appropriate sentence. *See generally Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (observing that the district court's broad sentencing discretion allows it to consider "a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant"). Further, although the district court interrupted appellant when he expressed remorse for his crime, we discern no bias; rather, the district court sought to clarify that appellant was "accepting responsibility for the underlying facts of this offense" and was not attempting to "deflect[ ] in any way." We therefore conclude that appellant has not shown bias on any of the grounds he asserts.

Appellant argues that the district court abused its discretion by ignoring mitigating evidence and sentencing him to 28 to 72 months in prison. 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 (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).

The sentence imposed is within the parameters provided by the relevant statute, *see* NRS 207.190, and appellant does not allege that the statute is unconstitutional. Appellant also does not allege that the district court relied on impalpable or highly suspect evidence. His claim that the district court ignored his mitigation evidence is belied by the record, as the district court indicated that it had read the letters, certificates, and a five-year after-care release plan submitted by appellant and heard appellant's statement of remorse and counsel's argument, which the district court complimented. In imposing sentence, the district court noted that appellant committed the offense within three years of being paroled after serving 23 years for a sex offense involving a 65-year-old victim and he had violated parole within one year of his release from prison for having unsupervised contact with a minor. 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.

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

ORDER the judgment of conviction AFFIRMED.[1]

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. David A. Hardy, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[1]Despite counsel's verification that the fast track statement complies with applicable formatting requirements, the fast track statement does not comply with NRAP 32(a)(4) because it is not double-spaced and NRAP 32(a)(5) because the footnotes are not the same size as the body of the text. 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).