

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY PRICE BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65093

FILED

OCT 15 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, pursuant to a guilty plea, of possession of a firearm by a felon, sentenced under the habitual criminal statute. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Appellant Henry Bradley argues on appeal that his sentence constitutes cruel and unusual punishment under the Nevada Constitution because it is disproportionate to the gravity of the offense in light of the facts that he did not injure anyone in committing the offense and that his possession of a firearm was merely constructive. We disagree.

The trial court has wide discretion in imposing a sentence, and this court will uphold its determination absent a showing of an abuse of discretion. *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The adjudication of a habitual criminal is, further still, "subject to the broadest kind of judicial discretion." *Tanksley v. State*, 113 Nev. 997, 1004, 946 P.2d 148, 152 (1997) (internal quotation marks and citations omitted). 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 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).

Bradley's arguments that his punishment was disproportionate because no injuries resulted and his possession of the firearm was merely constructive are not persuasive considering his history of recidivism, including 7 prior felony convictions, 1 gross misdemeanor conviction, and 18 additional misdemeanor convictions. Nevada's habitual offender statute was intended to impose additional penalties in situations like this one. See *Tanksley*, 113 Nev. at 1004, 946 P.2d at 152 ("The purpose of the habitual criminal statute is to increase sanctions for the recidivist and to discourage repeat offenders."); *Odoms v. State*, 102 Nev. 27, 33, 714 P.2d 568, 572 (1986) (noting that "society has the right to remove from its ranks for a longer time those who refuse to conform to a lawful mode of living" (internal quotation marks omitted)). The habitual criminal statute is especially applicable here where Bradley was convicted in 2005 for the same offense. See *Odoms*, 102 Nev. at 33, 714 P.2d at 572.

The sentence imposed is within the parameters provided by the relevant statutes, see NRS 202.360(1)(a), NRS 207.010(1)(a), and Bradley does not allege that those statutes are unconstitutional. We are not convinced that the sentence imposed is so grossly disproportionate to the crime and Bradley's history of recidivism as to constitute cruel or unusual punishment. See *Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion); *Sims v. State*, 107 Nev. 438, 814 P.2d 63 (1991)

(affirming a sentence of life without the possibility parole for the triggering offense of grand larceny involving the theft of a purse and wallet containing \$476). We conclude that the district court properly exercised its discretion. *See Tanksley*, 113 Nev. at 1004, 946 P.2d at 152.

Having considered Bradley's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Hon. Jerome T. Tao, District Judge
The Law Office of Dan M. Winder, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk