IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAGMAR J. DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66589

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of attempted sexual assault and second-degree kidnapping. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, appellant Dagmar Diaz argues his aggregate prison sentence of 14 to 35 years constitutes cruel and unusual punishment. Regardless of its severity, "[a] sentence 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) (internal quotation marks omitted); *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).

Here, Diaz's sentence falls within the parameters of the relevant statutes. *See* NRS 193.330(1)(a)(1); NRS 200.366(2); NRS 200.330. Diaz does not allege that the relevant statutes are unconstitutional. And we are not convinced the sentence imposed is so grossly disproportionate to the crime as to constitute cruel and unusual punishment.

Second, Diaz appears to argue the district court abused its discretion by imposing the maximum allowable sentence. Diaz states he took responsibility for his actions by pleading guilty, he is only 21 years old, his criminal history consists of a single misdemeanor battery conviction, and he suffers from significant mental health disorders. The district court has wide discretion in its sentencing decision, *see Houk v. State,* 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), including whether to impose consecutive sentences, NRS 176.035(1). We will not interfere 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).

Here, Diaz's sentence falls within the parameters of the relevant statutes, and the record does not suggest the district court's sentencing decision was based on impalpable or highly suspect evidence. Accordingly, we conclude Diaz has failed to demonstrate the district court abused its discretion in this regard.

Third, Diaz argues the district court exhibited an undue bias towards one of the victims through remarks it made prior to imposing the sentence. A judge is presumed to be impartial and the burden rests with the challenger to demonstrate sufficient facts establishing bias. *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). Moreover, the "remarks 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." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

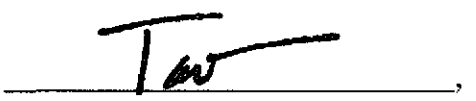
Here, the victim described how she was impacted by Diaz's actions: she had panic attacks, her relationship with her husband and children was affected, she suffered from nightmares, and she no longer drove alone because she was afraid. The judge advised her to put this matter behind her, suggested she seek counseling from a religious leader, and informed her Diaz would be going to prison for a long time. The judge's remarks were made at the end of the victim's impact statement—after all of the other evidence had been presented and immediately before he imposed the sentence. We conclude these remarks do not exhibit an impermissible bias or prejudice.

Fourth, Diaz argues the district court erred by denying his motion to withdraw his guilty plea, or in the alternative, to resentence him pursuant to the plea agreement and by not appointing counsel to examine his claims of ineffective assistance of counsel. Because Diaz's motion was filed after sentencing and the district court order denying the motion was

not designated in the notice of appeal, we conclude we lack jurisdiction to consider this argument. *See* NRAP 3(c)(1)(B); *Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 627-28 (2014); *Abdullah v. State*, 129 Nev. ___, ___, 294 P.3d 419, 421 (2013).

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

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk