

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARIUS KHALIL DOLLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67686

FILED

AUG 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of discharging a firearm at or into an occupied structure, and child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.


On appeal, appellant Darius Dolly claims his sentence of 19 to 48 months constitutes cruel and unusual punishment because he has no prior criminal history, the Division of Parole and Probation recommended probation, and the sentence fails to serve the interests of justice.


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 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). The sentence imposed is within the

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parameters provided by the relevant statutes, *see* NRS 202.285; NRS 200.508(1), and Dolly does not allege those statutes are unconstitutional. We conclude the sentence imposed is not so grossly disproportionate to the crime as to constitute cruel and unusual punishment, therefore we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Adriana Escobar, District Judge
Keith C. Brower
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk