

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67088

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal under NRAP 4(c) from a judgment of conviction entered pursuant to a guilty plea of battery constituting domestic violence with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.¹

Appellant Anthony Bailey claims his 24- to 72-month prison sentence constitutes cruel and unusual punishment. He asserts the prison sentence is unreasonably disproportionate to his offense because he and the victim had a history of altercations and “mutual combat” and the district court was aware of this history.


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.*


¹The Honorable David Wall, retired District Judge, presided over Bailey’s arraignment and sentencing and entered the judgment of conviction in this case.


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).

Here, the sentence imposed is within the parameters provided by the relevant statute. *See* NRS 200.481(2)(e)(1). Bailey does not allege the statute is unconstitutional. And we conclude the sentence is not so grossly disproportionate to the crime and Bailey's history of recidivism as to constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk