IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLIDER ALEXANDER AGUILAR A/K/A ALEXANDER CLIDER AGUILAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68226

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a plea of no contest of possession of a schedule I or schedule II controlled substance for the purpose of sale. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Appellant Clider Aguilar claims the district court abused its discretion at sentencing by not granting probation because he had a tragic personal history—he began drinking alcohol at age five, his mother frequently abused him, and his mother tried to kill him.

The granting of probation is discretionary, NRS 176A.100(1)(c), and we will refrain from interfering with the sentence imposed "[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).

Aguilar's sentence of 16 to 40 months in prison is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d); NRS 453.337(2)(a), and he does not allege the district court relied on impalpable or highly suspect evidence. Given the nature of Aguilar's

crime and his criminal history, we conclude the district court did not abuse its discretion by declining to suspend the sentence and place Aguilar on probation.

Aguilar also claims his sentence is cruel and unusual because it is not "graduated and proportioned to possession of marijuana with intent to sell" and the district court went to the extreme of ordering it to be served consecutively to the sentence in another case. However, Aguilar has not alleged the sentencing statutes are unconstitutional, the sentence falls within the parameters of those statutes, and the sentence is not so grossly disproportionate to the gravity of his offense so as to shock the conscience. *See* NRS 193.130(2)(d); NRS 453.337(2)(a); *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion); *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). Accordingly, we conclude Aguilar's sentence does not violate the constitutional proscriptions against cruel and unusual punishment.

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

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Alvin R. Kacin, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk