

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON RAY MCNEIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68269

FILED

FEB 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Amor*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of burglary. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.


Appellant Brandon McNeil claims that his sentence to a prison term of 12 to 30 months for burglary constitutes cruel and unusual punishment because he did not threaten or point a weapon at the victim and all of the victim's property was recovered outside of her home.


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).


116-900183

Here, McNeil received the sentence he bargained for. Moreover, the sentence imposed is within the parameters provided by the relevant statute, *see* NRS 205.060(2), and McNeil does not allege this statute is unconstitutional. We conclude the sentence imposed is not so grossly disproportionate to the crime as to constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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