

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEANNE AUGUIANO, A/K/A JEANNE
OPORTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69260

FILED

APR 20 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of two counts of driving and/or being in actual physical control of a motor vehicle while under the influence of a controlled substance and/or a prohibited substance resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Jeanne Auguiano argues the district court abused its discretion by imposing her sentences to run consecutively instead of concurrently as stipulated to by the parties in their plea agreement.

The district court has discretion to impose consecutive sentences, *see* NRS 176.035(1); *Warden v. Peters*, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967); *see also Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence”), 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).

Auguiano's consecutive prison sentences of 8 to 20 years fall within the parameters of the relevant statutes. See NRS 176.035(1); NRS 484C.430(1)(f). Auguiano has not alleged the district court relied on impalpable or highly suspect evidence. And the court's sentencing decision was not bound by the terms of the parties' plea agreement. See generally *Van Buskirk v. State*, 102 Nev. 241, 244, 720 P.2d 1215, 1217 (1986). Accordingly, we conclude the court did not abuse its discretion at sentencing.

Auguiano also argues her sentence constitutes cruel and unusual punishment because the offense she pleaded guilty to not only covers driving under the influence that results in substantial bodily harm but also driving under the influence that results in death and she could not have received a more severe sentence if the victims in her case had died.


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 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).

Auguiano was adjudicated guilty of two counts of driving and/or being in actual physical control of a motor vehicle while under the influence of a controlled substance and/or a prohibited substance resulting

in substantial bodily harm based on her guilty plea. Her sentence falls within the parameters of the relevant statutes. See NRS 176.035(1); NRS 484C.430(1)(f). And she does not allege those statutes are unconstitutional. Accordingly, we conclude the sentence imposed is not so grossly disproportionate to the crime as to constitute cruel and unusual punishment.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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