

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GAGIK GREG ANDRJASOV,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69035

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 burglary, using a scanning device or reencoder to defraud, and establishing or possessing a financial forgery laboratory. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

First, appellant Gagik Andrjasov claims the district court abused its discretion by sentencing him based on the sophistication of the crime rather than by making an individualized determination whether he was eligible for probation.

The granting of probation is discretionary. See NRS 176A.100(1)(c). See generally *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). This court 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).

Before imposing sentence, the district court stated it gave strong consideration to the documents and arguments presented by the

parties. This included Andrjasov's lack of criminal history, his family, employment, and the facts of the crime. The district court sentenced Andrjasov to concurrent terms of imprisonment totaling 19 to 48 months. The sentence imposed in this case is within the parameters provided by the relevant statutes. *See* NRS 205.060(2); NRS 205.46513(2); NRS 205.605(2).

Further, Andrjasov fails to demonstrate the district court relied on impalpable or highly suspect evidence. Andrjasov claims the district court abused its discretion by relying on a presentence investigation report (PSI) that recommended 56 months for Andrjasov who has no criminal history and only 22 months for his codefendant that has a criminal history. Even assuming there was error in the PSI, Andrjasov fails to demonstrate the district court relied on it at sentencing. Andrjasov provided his own "alternative" PSI to the district court that appears to have recommended a much lower sentence.¹ Further, the district court agreed with Andrjasov that the recommendation in the PSI did not make much sense. The record does not support Andrjasov's claim the district court did not reasonably consider his request for probation. Considering the potential number of victims and the sophistication of the crime, we conclude the district court did not abuse its discretion in declining to suspend the sentence and place Andrjasov on probation.


Second, Andrjasov claims his sentence constitutes cruel and unusual punishment because the district court failed to adequately balance the nature and circumstances of the offense with his individual characteristics. Regardless of its severity, a sentence that is within the

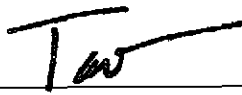
¹The "alternative" PSI was not provided to this court.

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). As stated above, the sentence imposed is within the parameters provided by the relevant statutes, and Andrijasov does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not so grossly disproportionate to the crime as to constitute cruel and unusual punishment.

Having considered Andrijasov's claims on appeal and concluded they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk