

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY MATHEW FULKERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69837

FILED

JUN 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of possession of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Appellant Roy Fulkerson claims the district court abused its discretion by sentencing him to a prison term rather than placing him in a drug treatment program. Further, he claims the district court failed to state on the record the reasons for denying him the drug treatment program. We disagree. Under NRS 458.300(4), Fulkerson was not eligible for a program of treatment because he had four prior felony convictions. Therefore, the district court did not abuse its discretion by failing to place him a drug treatment program or for failing to state the reasons for denying him the treatment program.

Next, Fulkerson claims his sentence of 19 to 48 months in prison constitutes cruel and unusual punishment. 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,


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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).

The sentence imposed is within the parameters provided by the relevant statutes, see NRS 193.130(2)(e); NRS 453.336(2)(a), and Fulkerson does not allege those statutes are 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. Michael Montero, District Judge
Pershing County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk