

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEBASTIAN DOMINGO MORALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69763

FILED

AUG 17 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of theft. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

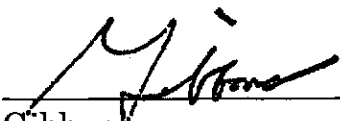
Appellant Sebastian Domingo Morales claims the district court abused its discretion at sentencing by not imposing probation and his sentence constitutes cruel and unusual punishment.

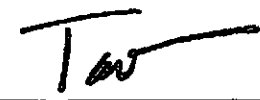
The granting of probation is discretionary. See NRS 176A.100(1)(c). See generally *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). This court will refrain from interfering with the sentence imposed “[s]o long as 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). Further, 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).

Morales' prison term of 19-48 months is within the parameters provided by the relevant statutes. See NRS 193.130(2)(c); NRS 205.0835(3). Morales does not allege that the district court relied on impalpable or highly suspect evidence, nor does he allege that the sentencing statutes are unconstitutional. Additionally, the district court was not required to follow the recommendation of the parties or the Division of Parole and Probation when imposing sentence. See *Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978). We conclude the district court did not abuse its discretion when imposing sentence and 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. Douglas Smith, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk