

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEMETRIUS METMET BLACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70356

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, robbery with the use of a deadly weapon, and battery with intent to commit a crime. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.


Appellant Demetrius Black contends his sentence constitutes cruel and unusual punishment. He specifically asserts his sentence is disproportionate to the crime because he was only 22 years old at the time of sentencing; although he had 16 prior felony convictions, they all arose from a single incident and that incident and the instant offense occurred within a five month period; although his juvenile history started when he was 11 years old, he had no prior adult convictions before the crime spree at issue; and the victim in this matter was reluctant to testify.


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).

The district court considered the factors listed in NRS 193.165(1) and sentenced Black to a term of 24 to 60 months for the conspiracy conviction; a term of 48 to 120 months for the robbery conviction, plus a consecutive term of 12 to 36 months for the deadly weapon enhancement; and a term of 24 to 60 months for the battery conviction. The district court noted Black's age and the sentences he received for his prior convictions and, in order to give Black a chance at parole, ordered all sentences to run concurrently with each other and with the sentence imposed in another case. As Black acknowledges, the sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 193.165(1); NRS 199.480(1)(a); NRS 200.380(2); NRS 200.400(2), and Black 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. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk