

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO MASCARENAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69769

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 guilty plea, of attempted burglary. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.


Appellant Francisco Mascarenas claims that, because he took responsibility for his crime and pleaded guilty, the district court abused its discretion when imposing sentence and his sentence constitutes cruel and unusual punishment.


The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court “[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). 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).

Mascarenas' sentence of 19-48 months is within the parameters provided by the relevant statutes, see NRS 193.330; NRS 205.060, and Mascarenas does not allege that those statutes are unconstitutional. Mascarenas also does not allege the district court relied on impalpable or highly suspect evidence. We have considered the sentence and the crime and we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment and the district court did not abuse its discretion when imposing sentence. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kerry Louise Earley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk