

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON ANDREW STRATTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71596

FILED

MAR 23 2017

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

ORDER OF AFFIRMANCE

Appellant Jason Stratton appeals from a judgment of conviction entered pursuant to a no contest plea of attempted eluding a police officer in a manner posing danger to persons or property. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, Stratton claims the district court abused its discretion at sentencing by denying him an opportunity for a drug diversion program. He asserts he took accountability for his actions, he has mental health issues, and he was a drug abuser and needed help.

We review a district court's decision denying a request for a drug treatment program under NRS chapter 458 for an abuse of discretion. *Cassinelli v. State*, 131 Nev. ___, ___, 357 P.3d 349, 356-58 (Nev. App. 2015); *see also* NRS 458.320(2).

Stratton sought civil commitment under NRS chapter 458. The district court denied this request because the facts of the crime were just too serious and because Stratton had a prior felony conviction. We conclude the district court did not abuse its discretion by denying Stratton's request for civil commitment pursuant to NRS chapter 458. *See* NRS 458.320(2) ("If the court, acting on the report or other relevant

information, determines that the person. . . is otherwise not a good candidate for treatment, the person may be sentenced and the sentence executed.”).

Second, Stratton claimed the district court abused its discretion by sentencing him to serve a term of imprisonment rather than sentencing him to 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).

The sentence imposed in this case is within the parameters provided by the relevant statutes, see NRS 484B.550(3)(b); NRS 193.330(1)(a)(3); NRS 193.130(2)(c), and Stratton does not allege that the district court relied on impalpable or highly suspect evidence. The district court concluded Stratton was a danger to the community based on Stratton’s prior felony and his conduct in this case, which endangered three people. Based on this finding, we conclude the district court did not abuse its discretion in declining to suspend the sentence and place Stratton on probation.


Finally, Stratton claims his sentence of 12 to 32 months in prison constituted cruel and unusual punishment. Regardless of its severity, a sentence 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).

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

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk