

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC GAVIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71496

FILED

MAR 23 2017

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

ORDER OF AFFIRMANCE

Appellant Eric Gavin appeals from his judgment of conviction, entered pursuant to a guilty plea, of resisting a public officer with the use of a firearm. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Gavin argues the district court abused its discretion by imposing a prison term rather than granting him probation and by failing to consider his mitigation evidence at sentencing. He further argues 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

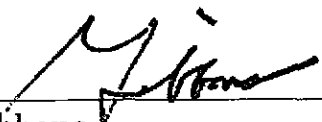
the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Gavin’s sentence of 19 to 48 months is within the parameters provided by the relevant statutes, see NRS 199.280(1); NRS 193.130(2)(c), and Gavin does not allege that those statutes are unconstitutional. Gavin 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. We further conclude the district court did not abuse its discretion by imposing a prison term rather than granting Gavin probation. See NRS 176A.100(1)(c). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk