

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MACIO JACOB COLEMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70615

**FILED**

**MAR 22 2017**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER AFFIRMING AND REMANDING*

Appellant Macio Jacob Coleman appeals from a judgment of conviction entered pursuant to a no contest plea of unlawful possession of a firearm or firearms by a person previously convicted of a misdemeanor crime of domestic violence within the meaning of 18 U.S.C. § 921(a)(33). Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, Coleman claims the district court abused its discretion by imposing his sentence to run consecutively to his sentence in another case because he took responsibility for his actions by pleading no contest, he did not use the firearms in question to commit violent acts, and he was not a convicted felon at the time of this offense. We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Coleman's 19- to 48-month prison sentence falls within the parameters of the relevant statute. *See* NRS 202.360(1). Coleman has not alleged the court relied solely on impalpable or highly suspect evidence. *See Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And NRS 176.035(1) plainly gives the court discretion to run subsequent sentences consecutively. *Pitmon v. State*, 131 Nev. \_\_\_, \_\_\_, 352 P.3d 655, 659 (Ct. App. 2015). Accordingly, we conclude the district court did not abuse its discretion in this regard.

Second, Coleman claims his sentence constitutes cruel and unusual punishment because it is “not graduated and proportioned to the offense of possessing a firearm after having been convicted of misdemeanor domestic violence.” 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). Coleman does not claim NRS 202.360 is unconstitutional, and we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.


Third, Coleman claims the district court erred by not aggregating the sentence he received in this case with the sentences he received in another case. NRS 176.035(1) provides in relevant part, “For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment.” NRS 176.035 is silent as to whether the district court’s duty to pronounce the minimum and maximum aggregate terms of imprisonment is limited to the consecutive sentences imposed within a single judgment of conviction or encompasses consecutive sentences imposed by multiple judgments of conviction.


Coleman committed his offenses after July 1, 2014, he was sentenced in two different judgments of conviction, and his sentence in

this judgment of conviction was imposed to run consecutively to the sentence in his other judgment of conviction. The State does not object to a remand for the sole purpose of amending the judgment of conviction to include the aggregate minimum and maximum terms of Coleman's consecutive sentences. We conclude this remedy is appropriate under the facts of this case. *See Mason v. State*, 132 Nev. \_\_\_, \_\_\_, 373 P.3d 116, 117 (2016).

For the reasons stated above, we

ORDER the judgment of conviction AFFIRMED AND REMAND this matter to the district court to enter a corrected judgment of conviction.

  
\_\_\_\_\_, 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