

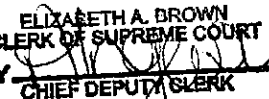
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DORIAN DAVID JOSEPH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72309

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Dorian David Joseph appeals from a judgment of conviction, pursuant to a guilty plea, of battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.


Joseph argues the district court abused its discretion by imposing a sentence that 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).

The district court heard the arguments of counsel and information regarding Joseph's criminal history, which included a crime of violence, and concluded a prison term of 24 to 60 months was the appropriate sentence in light of Joseph's criminal history and its concern for public safety. Joseph's sentence of 24 to 60 months in prison is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(c); NRS 200.481(2)(b), and Joseph does not allege those statutes are unconstitutional. Joseph also does not allege the district court relied on impalpable or highly suspect evidence. In addition, the district court properly considered Joseph's criminal history when imposing sentence. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Further, the decision to deny Joseph's request for probation was within the district court's discretion. *See* NRS 176A.100(1)(c). Under these circumstances, 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.
Silver


_____, J.
Tao


_____, J.
Gibbons

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