

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER RAPHAEL BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72290

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Roger Raphael Brown appeals from a judgment of conviction, pursuant to a guilty plea, of pandering. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

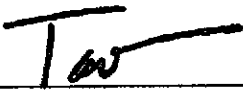
Brown argues his sentence constitutes cruel and unusual punishment because it is greater than the recommendation of the parties and a lengthier term serves no penal purpose. Regardless of its severity, "a sentence that is within the statutory limits is not 'cruel and unusual punishment unless the statute 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).

Brown's sentence of 24 to 60 months in prison falls within the parameters of the relevant statutes, see NRS 193.130(2)(c); NRS 201.300(1), and Brown makes no argument the statutes are unconstitutional or his

sentence was so disproportionate to the offense that it shocks the conscience. We also note the district court is also not required to follow the parties' sentencing recommendation and it properly considered Brown's lengthy history of recidivism when imposing sentence. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Under these circumstances, Brown failed to demonstrate his sentence amounts to cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Egan K. Walker, District Judge
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk