


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT MORRIE HAYES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71641

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Robert Morrie Hayes appeals from a judgment of conviction, pursuant to a jury verdict, of five counts of sexual assault of a minor under the age of 14 and five counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Hayes challenges the constitutionality of NRS 176.035(1), the statute permitting a district court to run the sentences for two or more offenses concurrently or consecutively. "The constitutionality of a statute is a question of law that we review de novo. Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity." *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006) (footnotes omitted).

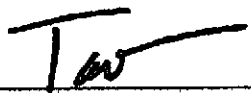
Hayes argues NRS 176.035(1) violates the Due Process Clauses of the United States and Nevada Constitutions because it fails to articulate any pre-existing and reviewable criteria to guide the district court in deciding whether to run multiple sentences concurrently or consecutively. We addressed this issue in *Pitmon v. State*, 131 Nev. ___, ___, 352 P.3d 655, 659-60 (Ct. App. 2015), and we determined NRS 176.035(1) is not


unconstitutionally vague and does not violate the Due Process Clauses of the United States and Nevada Constitutions.

We conclude Hayes has not demonstrated *Pitmon* was wrongly decided nor shown NRS 176.035(1) is unconstitutional. To the extent he claims his sentences are unconstitutional as applied to him, we conclude the sentences imposed did not violate constitutional standards and the district court did not abuse its discretion by imposing count 2 to run consecutive to count 1 and count 6 to run consecutive to count 2. See NRS 176.035(1); 2005 Nev. Stat., ch. 507, § 27, at 2847-75 (former version of NRS 200.366); 2005 Nev. Stat., ch. 507, § 33, at 2877-78 (former version of NRS 201.230); *Pitmon*, 131 Nev. at ___, 352 P.3d at 660-61. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Turco & Draskovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk