

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK COLOTTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71341

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Frank Colotto appeals from a judgment of conviction entered pursuant to a guilty plea of burglary and establishing or possessing a financial forgery laboratory. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Colotto argues his sentence of 10 to 25 years in prison, imposed pursuant to the large habitual criminal statute, constitutes cruel and unusual punishment. He argues this was a nonviolent offense, his failure to appear was not motivated by any ill will, he did not understand he was stipulating to being sentenced as a habitual criminal if he failed to appear, and the penalty for failing to appear was greater than double the maximum term of the original jointly recommended sentence.¹

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*,


¹We note the original recommended maximum sentence was 15 years in prison. Therefore, the imposed maximum sentence of 25 years was not greater than double the original recommended maximum.

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 sentence imposed is within the parameters provided by the relevant statute, *see* NRS 207.010(1)(b), and Colotto does not allege the statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and Colotto's history of recidivism and does not constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Aisen Gill & Associates LLP
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk