

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SYLVESTER TANNER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71567

FILED

DEC 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sylvester Tanner, Jr. appeals from a judgment of conviction entered pursuant to a jury verdict of coercion. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.


Tanner argues his sentence of 19 to 72 months in prison constitutes cruel and unusual punishment because the incident involved a fight between a couple and neither person suffered significant injuries. 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 sentence imposed is within the parameters provided by the relevant statute, see NRS 207.190(2)(a), and Tanner does not allege that statute is unconstitutional. To the extent Tanner argues the district court

should have sentenced him to serve a term of probation, the decision to deny Tanner's request for probation was within the district court's discretion. See NRS 176A.100(1)(c). We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk