

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73374

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Thomas Wilson appeals from a judgment of conviction, entered pursuant to a guilty plea, of robbery. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Wilson argues the district court abused its discretion at sentencing and his sentence constitutes cruel and unusual punishment. Specifically, Wilson argues the district court's sentence exceeded the recommendations of the Division of Parole and Probation and the State, was contrary to the substantial mitigating factors presented at sentencing, and was grossly disproportionate to the crime.

The district court has wide discretion in its sentencing decision.¹ *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Regardless of its severity, "[a] sentence "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


¹Even assuming we had authority to entertain Wilson's request to overrule *Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 957 P.2d 1141 (1998), we conclude he has failed to demonstrate such action is warranted.

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).

We have considered the sentence and the crime and we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. However, we note Wilson’s sentence of 60 to 144 months is illegal because the minimum term exceeds 40 percent of the maximum term. See NRS 193.130(1). Therefore, we conclude the district court abused its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for resentencing.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We remind the district court it “may correct an illegal sentence only to the extent necessary to bring the sentence into compliance with the statute.” *Miranda v. State*, 114 Nev. 385, 387, 956 P.2d 1377, 1378 (1998) (internal quotations omitted).

cc: Hon. Valerie Adair, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk