

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELLIOTT DEW, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72517

FILED

FEB 13 2018

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

ORDER OF AFFIRMANCE


Elliott Dew, Sr., appeals from a judgment of conviction, pursuant to a guilty plea, for second-degree arson. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

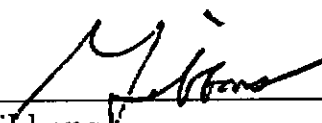
Dew first contends the district court erred when it sentenced him to prison without first allowing his social worker to speak and before his application to Veteran's Court was decided. We review a district court's sentencing decision for abuse of discretion. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). We will refrain from interfering with the sentence imposed by the district court "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Dew does not claim the district court relied on information supported only by impalpable or highly suspect evidence. We therefore conclude the district court did not abuse its discretion in sentencing Dew to prison.¹

¹To the extent Dew asserts the district court abused its discretion by not sua sponte continuing the sentencing hearing, we conclude he has failed

Dew also contends his sentence constitutes cruel and unusual punishment because a sentence of three to ten years shocks the conscience where the offender is a military veteran suffering from mental illness. 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)). Here, the sentence imposed is within the parameters provided by the relevant statute. See NRS 205.015. Dew does not allege that statute is unconstitutional. 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.²


_____, J.
Tao


_____, J.
Gibbons

to demonstrate plain error affecting his substantial rights. See *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

²The Honorable Abbi Silver did not participate in the decision in this matter.

cc: Hon. Kenneth C. Cory, District Judge
Wright Stanish & Winckler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk