

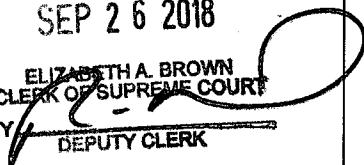
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES DEVON MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74524

FILED

SEP 26 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

James Devon Moore appeals from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit robbery and robbery. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Moore argues his sentence constitutes cruel and unusual punishment because the district court agreed to correct a scoring error within the sentencing recommendation from the presentence investigation report, but disregarded the corrected sentence recommendation when imposing Moore's sentence. Moore also argues the district court improperly sentenced Moore and a codefendant to serve identical sentences even though the codefendant had more culpability than Moore. "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 offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (internal quotation marks omitted).

Moore's concurrent prison terms of 28 to 72 months for the conspiracy count and 48 to 120 months for the robbery count fall within the


parameters of the relevant statutes, *see* NRS 199.480(1)(a); NRS 200.380(2), and Moore makes no argument the statutes are unconstitutional. In addition, the district court is not required to follow the sentencing recommendation of the Division of Parole and Probation. *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). Further, Moore is not entitled to relief based upon the sentence received by his codefendant. *See Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 391, 390 (1990). 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.




Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Michael Villani, District Judge  
Law Offices of Martin Hart, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk