

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARC ROBERT ZIEGENFUSS, A/K/A
MARC ROBERT ZIEGENGUSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73140

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Marc Robert Ziegenfuss appeals from a judgment of conviction, pursuant to a guilty plea, for theft. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.


Ziegenfuss first contends his sentence constitutes cruel and unusual punishment. The district court has wide discretion in its sentencing decision. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). We will not interfere 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 palpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). 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 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 of 16 to 72 months imposed is within the parameters provided by the relevant statute, *see* NRS 205.0835(4), and Ziegenfuss does not allege that statute is unconstitutional. Ziegenfuss also does not allege the district court relied on impalpable or highly suspect evidence. We have considered the sentence and the crime, and we conclude the sentence imposed is not grossly disproportionate to the crime, it does not constitute cruel and unusual punishment, and the district court did not abuse its discretion when imposing sentence.

Ziegenfuss also contends he is entitled to relief because he received ineffective assistance of counsel at sentencing. An ineffective-assistance-of-counsel claim is generally inappropriate on direct appeal, and Ziegenfuss has failed to demonstrate his claim falls into an exception to that general rule. *See Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001) (“[W]e have generally declined to address claims of ineffective assistance of counsel on direct appeal unless there has already been an evidentiary hearing or where an evidentiary hearing would be unnecessary.”), *abrogated on other grounds by Rippo v. State*, 134 Nev. Adv. Op. 53, n.12 (Nev. 2018).

Having concluded Ziegenfuss is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Gregory & Waldo, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk