IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN MCLEAN TILLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75233-COA

FILED

NOV 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

John McLean Tilley appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted eluding an officer in a manner posing a danger to persons or property. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, Tilley argues the district court abused its discretion by declining to place him on probation. He claims he should have been placed on probation because he had been doing well on probation, he was a productive member of society who had employment opportunities, he had a supportive fiancé, and he has to pay restitution and cannot do that while in prison.

The granting of probation is discretionary. *See* NRS 176A.100(1)(c); *see generally Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . ."). This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported

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only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

The sentence imposed of 12 to 36 months is within the parameters provided by the relevant statutes, *see* NRS 484B.550(3); NRS 193.330(1)(a)(3); NRS 193.130(2)(c), and Tilley does not allege the district court relied on impalpable or highly suspect evidence. Considering Tilley has 11 prior felony convictions, he was on probation at the time this crime was committed, and the district court characterized the crime as "really dangerous," we conclude the district court did not abuse its discretion in declining to suspend the sentence and place Tilley on probation.

Second, Tilley argues his sentence constitutes cruel and unusual punishment. He claims the sentence was not proportional to the crime because the officer victim was neither maimed nor killed and the only thing injured was an automobile.

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).

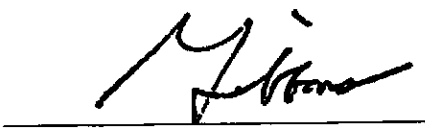
As stated previously, the sentence imposed is within the parameters provided by the relevant statutes, and Tilley does not allege

those statutes are 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.

_____, C.J.
Silver

_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk