IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MIA CHRISTMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73939-COA

FILED

NOV 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mia Christman appeals from a judgment of conviction, pursuant to a guilty plea, of robbery with the use of a deadly weapon and stop required on signal of a police officer. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Christman contends the district court should have granted her motion to dismiss court-appointed counsel and appoint replacement counsel. This court reviews the district court's actions for an abuse of discretion, *Young v. State*, 120 Nev. 963, 969, 102 P.3d 572, 576 (2004), and it does so using a three-part inquiry: what was "(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion," *id.* at 968, 102 P.3d at 576. Christman has not demonstrated she is entitled to relief.

Christman's frustration with the level of communication she had with counsel did not necessarily signal a significant breakdown in their relationship. And we are unable to review the adequacy of the district court's inquiry into the alleged conflict because Christman failed to provide this court with transcripts of the hearings held on her motion. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a

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proper appellate record rests on appellant."). We, therefore, cannot conclude the district court abused its discretion by failing to appoint alternate counsel to represent Christman.

Next, Christman contends her sentence was excessive and constituted 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 impalpable 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) (internal quotation marks omitted); *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). And it is not an abuse of discretion to impose a longer sentence than recommended in a presentence investigation report. *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972).

The aggregated imposed sentence of 10 to 30 years is within the parameters provided by the relevant statutes, *see* NRS 193.165(1); NRS 200.380(2); NRS 484B.550(4), and Christman does not allege those statutes are unconstitutional. Christman also concedes the district court did not rely 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.

Next, Christman contends her guilty plea was not knowingly entered. Unless the error appears clearly in the record, a challenge to the validity of a guilty plea must be raised in the district court in the first instance. *Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994). Christman did not move to withdraw her guilty plea, and because she concedes she stated on the record that her plea was entered into knowingly and voluntarily, the error is not clear from the record. Accordingly, we do not reach the merits of this claim.[1]

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Stefany Miley, District Judge
Law Office of John G. George
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[1]To the extent Christman contends she received ineffective assistance from counsel, we decline to reach the merits of her claim. *See Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001).