

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDRE JERMAINE RUTLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74425-COA

FILED

DEC 19 2018

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

ORDER OF AFFIRMANCE

Andre Jermaine Rutland appeals from a judgment of conviction, entered pursuant to a jury verdict, of burglary. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Rutland claims the sentence he received of 16 to 72 months in prison, which was ordered to run consecutively to another case, constitutes cruel and unusual punishment. Specifically, he claims the sentence is cruel and unusual because the victim was not ultimately dispossessed of its property, he was cooperative with the police, and he took responsibility for what he did at trial.


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 imposed is within the parameters provided by the relevant statute, *see* NRS 205.060(2), and Rutland does not allege the statute is unconstitutional.¹ We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Further, whether to run the sentences in the different cases consecutively was within the discretion of the district court. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 129-30, 352 P.3d 655, 659-60 (Ct. App. 2015). Given Rutland's criminal history and past failures on probation and parole, we conclude the district court did not abuse its discretion by imposing the sentences to run consecutively. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹To the extent it appears Rutland argues he should have been placed on probation, he failed to demonstrate the district court abused its discretion by declining to place him on probation. *See* NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence. . .").

cc: Hon. Susan Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk