

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL ALVARA-RIVERA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74609-COA

**FILED**

JAN 17 2019

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

*ORDER OF AFFIRMANCE*

Joel Alvara-Rivera appeals from a judgment of conviction, entered pursuant to a guilty plea, of two counts of conspiracy to commit robbery, two counts of robbery with the use of a deadly weapon, and one count each of grand larceny auto and stop required on signal of police officer. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, Alvara-Rivera claims the State improperly sought a consolidation of his two cases in the district court, and the district court erred by granting that motion. As Alvara-Rivera did not reserve in his plea agreement the right to challenge the district court's order granting the State's motion to consolidate the cases, *see* NRS 174.035(3), he waived any challenge to that ruling, because it arose prior to the entry of his guilty plea, *see Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). We therefore decline to reach the merits of this claim.<sup>1</sup>

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<sup>1</sup>To the extent Alvara-Rivera claims the error was structural, we conclude he failed to demonstrate the consolidation of the cases constituted structural error. *See Cortinas v. State*, 124 Nev. 1013, 1024, 195 P.3d 315, 322 (2008) (explaining the narrow circumstances where a district court commits structural error).

Second, Alvara-Rivera claims his sentence constitutes cruel and unusual punishment because he received a more severe sentence than his codefendant who brandished a shotgun and the district court did not consider Alvara-Rivera's youth, mental health, or lack of criminal history.


The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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) (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 of 9 to 26 years is within the parameters provided by the relevant statutes, *see* NRS 193.165(1); NRS 199.480(1)(a); NRS 200.380(2); NRS 205.228(3); NRS 484B.550(3)(b), and Alvara-Rivera does not allege that those statutes are unconstitutional. Alvara-Rivera 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 and does

not constitute cruel and unusual punishment and the district court did not abuse its discretion when imposing sentence. The district court heard argument from both of the parties and reviewed the sentencing memorandum provided by Alvara-Rivera along with medical records and letters of support. The district court was made aware Alvara-Rivera did not have a criminal history. The district court also heard the facts of the case and the fact Alvara-Rivera used a handgun in the second robbery and led the police on a high speed chase. Given these facts, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, A.C.J.  
Douglas

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

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