IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY OLESEN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36872

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14 years. The district court sentenced appellant to serve 24 to 96 months in prison. The district court also imposed a special sentence of lifetime supervision to commence upon any release from probation, parole or term of imprisonment.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States Constitution, and that the district court abused its discretion by refusing to grant probation after receiving favorable psychological and psychosexual evaluations. We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence; it only prohibits an extreme sentence that is grossly disproportionate to the crime.[1] Regardless of its severity, a sentence that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or

[1]Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion).

the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[2]

Moreover, this court has consistently afforded the district court wide discretion in its sentencing decision.[3] Accordingly, we 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 only by impalpable or highly suspect evidence."[4]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[5] Moreover, a favorable certification pursuant to NRS 176A.110 makes a defendant eligible for probation; it does not make probation mandatory.[6] After reviewing the record on appeal, we conclude that appellant has not demonstrated that the district court abused its discretion by refusing to grant probation. We also

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[2]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, 222 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[3]See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[4]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[5]See NRS 201.230 (providing that lewdness with child under age of 14 years is category A felony); NRS 193.330(1)(a)(1) (providing that sentence for attempt to commit category A felony is imprisonment for 2 to 20 years).

[6]See NRS 176A.110(1) ("The court shall not grant probation to or suspend the sentence of a person convicted of an offense listed in subsection 3 unless a psychologist . . . or psychiatrist . . . certifies that the person is not a menace to the health, safety or morals of others."). See generally Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978) ("The district court is vested with wide discretion regarding sentencing and probation.").

conclude that the sentence imposed is not so grossly disproportionate to the offense as to shock the conscience. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Michael V. Cristalli
Clark County Clerk