IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CESAR ALEJANDRO CLEMENTE-PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74256-COA

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cesar Alejandro Clemente-Perez appeals from a judgment of conviction entered pursuant to an *Alford*[1] plea of two counts of lewdness with a child under the age of 16. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

First, Clemente-Perez argues his sentence constitutes cruel and unusual punishment. Clemente-Perez asserts his sentence is grossly disproportionate to his crimes when considering his youth, his substance abuse issue, and his minor criminal history. 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)

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[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

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(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).

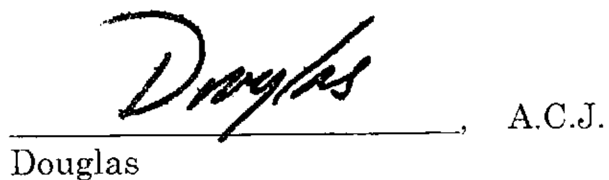
The district court imposed concurrent terms of 36 to 90 months, which was within the parameters provided by the relevant statute, *see* NRS 201.230(3), and Clemente-Perez does not allege that statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Second, Clemente-Perez argues the district court was biased against him. Clemente-Perez asserts the district court indicated its bias against him when it improperly described him as a tough "bad boy" who let his "hormones get the better of" him. Clemente-Perez did not object below and, therefore, we review the district court's conduct for plain error affecting his substantial rights. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). "[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence," *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998); *see also Rippo v. Baker*, 580 U.S. ___, ___, 137 S. Ct. 905, 907 (2017) ("Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." (internal quotation marks omitted)).

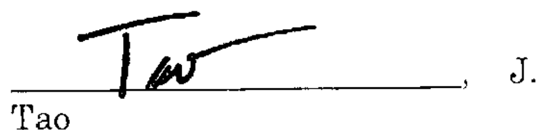
Based on the record in this matter, the statements by the district court reflect its view of the facts of Clemente-Perez' crimes and did not demonstrate that the court had closed its mind to the presentation of all

of the evidence. Therefore, we conclude Clemente-Perez failed to demonstrate plain error in this regard. Accordingly, we

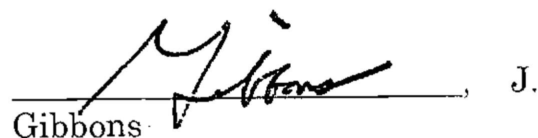
ORDER the judgment of conviction AFFIRMED.



_______________, A.C.J.
Douglas



_______________, J.
Tao



_______________, J.
Gibbons

cc: Hon. Kimberly A. Wanker, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk