IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICOLAS WILLIAM FAGOAGA A/K/A
NICHOLAS FAGOOADE A/K/A
NICHOLAS WILLIAM FAGOAGE A/K/A
NICK FAGOAGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75944-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nicolas William Fagoaga appeals from a judgment of conviction entered pursuant to a no contest plea of grand larceny of a motor vehicle. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, Fagoaga argues the district court erred by declining to award him 36 days of presentence credit for time he spent in a residential drug treatment facility. Fagoaga asserts he was sent to the treatment facility as part of a different criminal matter, was not formally released from custody in this case, and, therefore, was technically in custody for this offense during that time period. The district court concluded Fagoaga did not demonstrate he was entitled to credit for time in the treatment facility because he was not in custody in the county jail during that time. *See State v. Second Judicial Dist. Court*, 121 Nev. 413, 417, 116 P.3d 834, 836 (2005). In addition, Fagoaga did not demonstrate the program at the treatment facility so restrained his liberty that his time there was "tantamount to incarceration in a county jail" and, therefore, he was not entitled to presentence credits for that time period. *Cf. Grant v. State*, 99 Nev. 149, 151, 659 P.2d 878, 897 (1983). Given the record before this court, Fagoaga did not demonstrate the district court erred in denying his request for

additional presentence credits. Therefore, we conclude Fagoaga is not entitled to relief.

Second, Fagoaga argues the district court abused its discretion by awarding restitution to the victim. Fagoaga asserts the documentation containing the victim's accounting of her costs stemming from the theft of her vehicle was insufficient to demonstrate the victim actually suffered such losses or that she did not already receive compensation from insurance for those losses.

In determining the appropriate amount of restitution, a district court must rely on reliable and accurate information and its determination will not be disturbed absent an abuse of discretion. *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). In addition, the Nevada Supreme Court has previously held that "[a] defendant's obligation to pay restitution to the victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds." *Martinez*, 115 Nev. at 12, 974 P.2d at 135.

The record reveals the district court reviewed the documentation supporting the request for restitution, which included receipts and invoices concerning repair or replacement items for the victim's vehicle. The district court determined the documentation supported restitution for the victim's insurance deductible, an oil change, replacement stereo equipment for the vehicle, replacement license plates and registration, and a portion of the cost of replacement tires attributable to the thousands of miles Fagoaga drove the vehicle. Given the documentation

provided concerning the victim's losses, Fagoaga failed to demonstrate the district court abused its discretion when imposing restitution.

Third, Fagoaga argues the district court abused its discretion by sentencing him to serve 12 to 36 months in prison consecutive to his sentence for a different conviction. Fagoaga asserts he was entitled to a more lenient sentence because he took accountability for his actions.

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).

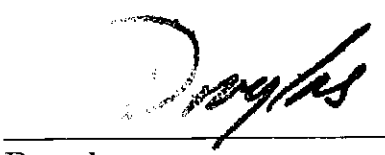
The record reveals that the district court heard the sentencing arguments of the parties and concluded a sentence of 12 to 36 months in prison consecutive to Fagoaga's other sentence was appropriate in this matter. The sentence imposed was within the parameters of the relevant statute, *see* NRS 205.228(3), and Fagoaga does not allege that the district court relied on impalpable or highly suspect evidence. Considering the record before this court, we conclude Fagoaga fails to demonstrate the district court abused its discretion when imposing sentence.

Fourth, Fagoaga argues his sentence constitutes cruel and unusual punishment because it was out of proportion to his offense. 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

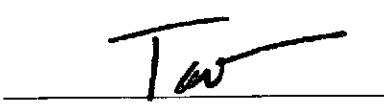
P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The district court imposed a term of 12 to 36 months, which was within the parameters provided by the relevant statutes, *see* NRS 205.228(3), and Fagoaga 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. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, A.C.J.
Douglas



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk