

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUINCY LEE GRUBENMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75260-COA

**FILED**

APR 05 2019

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

*ORDER OF AFFIRMANCE*

Quincy Lee Grubenman appeals from a judgment of conviction entered pursuant to a guilty plea of grand larceny of a firearm. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

First, Grubenman argues his sentence constitutes cruel and unusual punishment because the district court did not properly consider his mitigation evidence. 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).

At the sentencing hearing, the district court heard information concerning the facts of the offense and Grubenman’s mitigation evidence. The district court imposed a term of 16 to 72 months in prison, which was

within the parameters provided by the relevant statute, *see* NRS 205.226(2), and Grubenman does not allege the statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.


Second, Grubenman argues the district court abused its discretion at sentencing by failing to consider his mitigation evidence, speculating as to the facts of this offense, and punishing him for violating probation for a prior, unrelated matter. We review a district court's sentencing decision for an abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). "Few limitations are imposed on a judge's right to consider evidence in imposing a sentence" and "[p]ossession of the fullest information possible concerning a defendant's life and characteristics is essential to the sentencing judge's task of determining the type and extent of punishment." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). 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).


At the sentencing hearing, the district court heard information concerning the offense, Grubenman's mitigation evidence, and the victim's statement. The district court noted Grubenman has previously been convicted of a felony, was placed on probation, and violated the terms of his probation. The district court also noted Grubenman committed this crime shortly after his release from custody for his prior offense and that the facts of this matter show he took weapons from a home where he knew young children resided. The district court concluded a sentence of 16 to 72 months


in prison was the appropriate punishment. As stated previously, such a sentence was within the parameters of the relevant statute. See NRS 205.226(2). In addition, the district court's decision to decline Grubenman's request for probation was within its discretion. See NRS 176A.100(1)(c).

Considering the record before this court, we conclude the district court appropriately considered the facts of the offense and Grubenman's prior criminal history, and did not base its sentencing decision on impalpable or highly suspect evidence. Therefore, Grubenman fails to demonstrate the district court abused its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge  
Oldenburg Law Office  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk