


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT MICHAEL HERNANDEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67105

**FILED**

**MAR 16 2016**

TRACIE S. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery against a person over the age of 60. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Robert Hernandez contends the district court abused its discretion when imposing restitution because no reliable and accurate evidence was presented to support the restitution amount. Although Hernandez's counsel commented, at the conclusion of sentencing, he did not have any documentation regarding restitution and did not know how the restitution amount was calculated, counsel did not object and argue there was insufficient evidence to support the restitution amount and he did not request a restitution hearing. Therefore, this issue was not preserved for appeal, and we decline to address it. *See Martinez v. State*, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999).

Hernandez also contends the district court abused its discretion at sentencing and his sentence constitutes cruel and unusual punishment because the court imposed a sentence that exceeded the sentence recommended by the Division of Parole and Probation. He also



asserts his sentence for the elder enhancement is inappropriate in light of the factors set forth in NRS 193.167(3).

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 that is 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). “[T]here is no requirement imposed upon the sentencing court to set the penalty in compliance with the recommendations of the Department of Parole and Probation.” *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972).


The record demonstrates the district court considered the factors set forth in NRS 193.167(3) before imposing sentence. Hernandez victimized a 100-year-old man, took items the victim considered priceless, and pointed a gun at the head of the victim’s female caretaker. The judge stated that he had considered the mitigating evidence presented; the arguments of counsel; Hernandez’s prior criminal history, which included


violence and dangerous crimes; and the substantial benefit Hernandez received as a result of his guilty plea agreement. The judge stated that the primary factor driving his sentencing decision was deterrence and imposed a term of 72 to 180 months for the robbery conviction and a consecutive term of 72 to 240 months for the elder enhancement.

As acknowledged by Hernandez, the sentence imposed is within the parameters provided by the relevant statutes. See NRS 193.167(2); NRS 200.380(2). Hernandez does not allege those statutes are unconstitutional. Nor does he assert the district court relied on impalpable or highly suspect evidence when imposing sentence. We conclude the sentence imposed is not so grossly disproportionate to the crime as to constitute cruel and unusual punishment and the district court did not abuse its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Silver

cc: Hon. James E. Wilson, District Judge  
Day R. Williams, Attorney at Law  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk