IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL HAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75248-COA

ORDER OF AFFIRMANCE

Michael Hal appeals from a judgment of conviction entered pursuant to a guilty plea of three counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, Hal challenges the validity of his guilty plea. He specifically claims that he did not knowingly, voluntarily, or intelligently waive his right to appeal. "Generally, we will not review a plea-validity challenge that is raised for the first time on appeal. There are exceptions to this rule in cases where: (1) the error clearly appears from the record; or (2) the challenge rests on legal rather than factual allegations." *O'Guinn v. State*, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002) (footnotes omitted). As Hal has not alleged that either of these exceptions apply, we decline to consider his claim on direct appeal.

Second, Hal claims his aggregate prison sentence of 198 to 648 months constitutes cruel and unusual punishment because it is grossly disproportionate to the facts and circumstances of his case and he "may be imprisoned for most of his life."

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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).

Here, the sentence imposed falls within the parameters provided by the relevant statutes, *see* NRS 193.165(1); NRS 200.380(2), and Hal does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not grossly disproportionate to Hal's crimes and it does not constitute cruel and unusual punishment.

Third, Hal claims the district court abused its discretion by imposing consecutive sentences for similar crimes occurring on the same day.

The district court has discretion to impose consecutive sentences. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015); *Warden v. Peters*, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). *See generally Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . ."). This court 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." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Here, the sentence falls within the parameters of the relevant statutes, the record does not suggest the district court's sentencing decision was based on impalpable or highly suspect evidence, and we conclude Hal has not demonstrated the district court abused its discretion by imposing consecutive sentences.

Fourth, Hal claims his sentence must be reversed because the district court failed to state it had considered the factors enumerated in NRS 193.165(1) before imposing the sentences for the deadly weapon enhancements. Hal did not object below, and therefore he is not entitled to relief absent a demonstration of plain error. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009).

NRS 193.165(1) requires district courts imposing a sentence for a deadly weapon enhancement to articulate factual findings concerning: "(a) [t]he facts and circumstances of the crime; (b) [t]he criminal history of the person; (c) [t]he impact of the crime on any victim; (d) [a]ny mitigating factors presented by the person; and (e) [a]ny other relevant information." The district court must state on the record that it has considered these factors in determining the length of the deadly weapon enhancement. NRS 193.165(1); *Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 508.

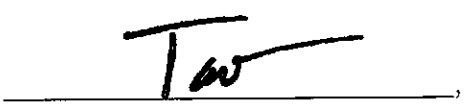
Here, the district court did not make separate findings for each deadly weapon enhancement before sentencing Hal and his codefendants. However, it did state that it had reviewed the facts and circumstances of the crimes, the criminal histories of the defendants, the impact these crimes had on the victims, and the contents of the presentence investigation report. And it further stated it had considered the youth of the defendants and the

fact that all but one of them lacked a criminal history. Based on this record, we conclude the district court's error "did not cause any prejudice or a miscarriage of justice and thus does not warrant relief." *Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 508. .

Fifth, Hal claims cumulative error deprived him of a fair sentence. However, we reject his claim because there was one error and the error did not cause any prejudice or a miscarriage of justice. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."); *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having concluded that Hal is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk