

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY CLARKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75169-COA

FILED

APR 29 2019

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

ORDER OF AFFIRMANCE


Anthony Clarke appeals from a judgment of conviction entered pursuant to a guilty plea of sale of a controlled substance. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

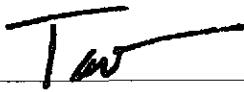
Clarke argues his sentence constitutes cruel and unusual punishment because the facts and circumstances of this matter show the sentencing court should have imposed probation and drug treatment. Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment 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 the statements of the parties and information concerning the facts of the offense. The district court imposed a term of 12 to 30 months in prison,

which was within the parameters provided by the relevant statute, *see* NRS 453.321(2)(a), and Clarke does not allege the statute is unconstitutional. In addition, the district court's decision to decline to impose a term of probation was within its discretion. *See* NRS 176A.100(1)(c). 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.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerome M. Polaha, District Judge
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk