

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN FRANK POLLARD, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70723

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant John Frank Pollard, Jr. appeals from a judgment of conviction entered pursuant to a guilty plea of driving and/or being in actual physical control of a motor vehicle while under the influence of a controlled substance and/or a prohibited substance resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Pollard claims his 8- to 20-year prison sentence constitutes cruel and unusual punishment because he is a 66-year-old Navy veteran with multiple serious medical conditions which make it extremely likely he will die before his prison sentence expires.

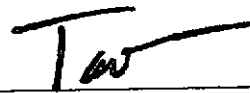
Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 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

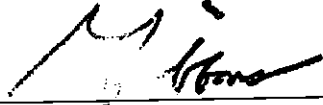
and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The sentence imposed falls within the parameters of the relevant statute, *see* NRS 484C.430(1)(f), and Pollard does not allege the statute is unconstitutional. We note the record indicates Pollard has a previous conviction for driving under the influence of a controlled substance. And 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.  
Silver

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

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

cc: Hon. Jennifer P. Togliatti, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk