

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES ROBERT SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71926

FILED

OCT 11 2017

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

ORDER OF AFFIRMANCE

Charles Robert Sanders appeals from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence of intoxicating liquor. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

First, Sanders argues the district court abused its discretion by imposing a sentence that constitutes cruel and unusual punishment because it was disproportionate to his crime. Sanders asserts the district court did not consider he changed the direction of his life, his rehabilitation, and his service to others when it imposed his sentence.

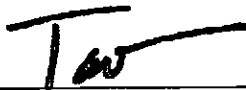
Regardless of its severity, a sentence that is "within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475,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

Sanders' sentence of 72 to 180 months in prison was within the parameters of the relevant statute, *see* NRS 484C.410(1), and Sanders does not allege that statute is unconstitutional. In addition, the district court properly considered Sanders' lengthy criminal history when imposing sentence. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Under these circumstances, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Second, Sanders argues his counsel was ineffective for failing to subpoena character witnesses for the sentencing hearing. Claims of ineffective assistance are not appropriate on direct appeal from the judgment of conviction "unless there has already been an evidentiary hearing" regarding such claims. *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995). There was not an evidentiary hearing regarding ineffective assistance of counsel claims, and therefore, we decline to address this claim in this appeal.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jim C. Shirley, District Judge
Pershing County Public Defender
Attorney General/Carson City
Pershing County District Attorney
Pershing County Clerk