

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS CALVILLO-ESPARZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71845

FILED

OCT 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jesus Calvillo-Esparza appeals from a judgment of conviction entered pursuant to a no-contest plea of battery with the use of a deadly weapon and first-degree arson. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, Calvillo-Esparza claims the district court abused its discretion by imposing his sentences to run consecutively. He argues the district court did not identify the mitigating aspects of the case and was punishing him for asserting his innocence.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Calvillo-Esparza's sentences fall within the parameters of the relevant statutes. See NRS 200.481(2)(e)(1); NRS 205.010. Calvillo-Esparza has not alleged the court relied solely on impalpable or highly suspect evidence. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively. *Pitmon v. State*, 131 Nev. ___, ___, 352 P.3d 655, 659 (Ct. App. 2015).

Moreover, the record demonstrates the district court considered the presentence investigation report, counsels' arguments, and Calvillo-Esparza's allocution. The district court researched Calvillo-Esparza's lesser-included-offense argument and concluded, "one crime is not a lesser included offense of the other, and the two do not merge for sentencing purposes." And the district court stated, "I do not believe that you accidentally sprayed lighter fluid on the victim and that you accidentally threw a burning piece of wood onto him. This crime shocks the conscience." Given this record, we conclude the district court did not abuse its discretion by imposing Calvillo-Esparza's sentences to run consecutively.

Second, Calvillo-Esparza claims his aggregate prison term of 10 to 25 years constitutes cruel and unusual punishment under the federal and state constitutions because it is grossly disproportionate to his crimes.

"The Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (plurality opinion). Similarly, the Nevada Supreme Court has observed, "[a] sentence within the statutory limits is not cruel and unusual punishment unless the statute fixing [the] 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) (internal quotation marks omitted). Calvillo-Esparza does not challenge the constitutionality of the statutes, so the only issue we must address is whether Calvillo-Esparza's aggregate sentence is grossly disproportionate to his crimes.

The State provided the following factual basis for Calvillo-Esparza's no-contest plea. Calvillo-Esparza intentionally doused the

fourteen-year-old victim with lighter fluid and then intentionally threw a piece of burning wood at the victim. The burning wood caused the victim's clothing to catch on fire. Calvillo-Esparza made no effort to extinguish the fire and did not allow the victim to seek medical treatment. The victim suffered burns to his body and a permanent scar. Given this factual basis, we conclude Calvillo-Esparza's aggregate prison term is not grossly disproportionate to his crimes and does not constitute cruel or unusual punishment.¹

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



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk

¹Because our comparison of Calvillo-Esparza's crime with his sentence does not give rise to an inference of gross disproportionality, we need not compare his sentence with the sentences received by other criminals in Nevada and other jurisdictions. See *Harmelin*, 501 U.S. at 1005.