

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANDRE MARTEZ CARTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71709

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Dandre Martez Carter appeals from a judgment of conviction entered pursuant to a guilty plea of attempted possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

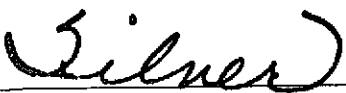
Carter claims his sentence constitutes cruel and unusual punishment because it shocks the conscience in light of the additional prison time awaiting him in California. Carter asserts the vehicle in question was 12 years old and was returned to its owner with only minor damage, his actions were motivated by a desire to improve his young family's situation, and he took responsibility for his action by pleading guilty. And Carter argues that, given these facts, his 16- to 40-month prison sentence with a low possibility of a timely parole release is shocking to the conscience.

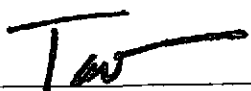
Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475,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

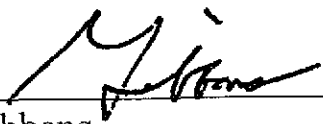
Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The sentence imposed falls within the parameters of the relevant statutes, *see* NRS 193.130(2)(d); NRS 193.330(1)(a)(4); NRS 205.273(3), and Carter does not allege those statutes are unconstitutional. We note the record indicates Carter has three prior felony convictions. And we conclude the sentence imposed is not grossly disproportionate to the crime and Carter's history of recidivism and does not constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Eric Johnson, District Judge
Michael R. Pandullo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk