IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACOB CHRISTOPHER GUNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70289

JACOB CHRISTOPHER GUNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70290

JACOB CHRISTOPHER GUNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70291

JACOB CHRISTOPHER GUNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70292

ORDER AFFIRMING AND REMANDING

Appellant Jacob Christopher Gunn appeals from judgments of conviction entered in four different district court cases.[1] In each case, Gunn pleaded guilty to one count of count of felony battery constituting domestic violence. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

First, Gunn argues the district court erred in failing to properly account for application of presentence credits toward his minimum aggregate sentences.

NRS 176.035(1) provides in relevant part, "[f]or offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment." Gunn committed his offenses after July 1, 2014, he was sentenced in four different judgments of conviction, the district court imposed sentence in all four cases at the same sentencing hearing, and the sentence in CR8165 was imposed to run consecutively to the sentence in CR8163. The district court did not provide minimum and maximum aggregate terms for the sentences Gunn is to serve. Further, the district court credited 29 presentence credits in CR8165 and 382 presentence credits in CR8167, but did not explain how those credits were to apply to Gunn's aggregate sentence.

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[1]Docket No. 70289 is an appeal from a judgment of conviction entered in district court case number CR8163. Docket No. 70290 is an appeal from a judgment of conviction entered in district court case number CR8165. Docket No. 70291 is an appeal from a judgment of conviction entered in district court case number CR8166A. Docket No. 70292 is an appeal from a judgment of conviction entered in district court case number CR8167.

The State concedes the district court should have specified the minimum and maximum aggregate terms, including the application of the presentence credits to the aggregate terms.

Under the facts of this case, we agree and we remand for the purpose of amending the judgments of conviction to identify the appropriate aggregate minimum and maximum terms of Gunn's sentences, including application of Gunn's presentence credits to the aggregate terms.[2] *See Mason v. State*, 132 Nev. ___, ___, 373 P.3d 116, 117 (2016).

Second, Gunn argues his sentences constitute cruel and unusual punishment because they are greater than the recommendation contained in the presentence investigation report and the recommendation the parties agreed to in the guilty plea agreement. 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).

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[2]We also note the sentences imposed in CR8166A and CR8167 are illegal because they were imposed to run concurrent with CR8163 and CR8165, but the sentences in CR8163 and CR8165 were imposed to run consecutive to each other. This district court shall also correct this error upon remand.

Gunn's sentences of 24 to 60 months for each term fall within the parameters of the relevant statutes, *see* NRS 193.130(2)(c), NRS 200.458(1)(c), and Gunn makes no argument the statutes are unconstitutional or his sentences are so disproportionate to the offenses that they shock the conscience. We also note the district court is not required to follow the sentencing recommendation of the Division of Parole and Probation, *see Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972) ("A trial court does not abuse its discretion by imposing a sentence in excess of that suggested by the [Division]"), and the district court is also not required to follow the parties' sentencing recommendation. Therefore, we conclude Gunn fails to demonstrate his sentences constitute cruel and unusual punishment. Accordingly, we

ORDER the judgments of conviction AFFIRMED and REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Kimberly A. Wanker, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk