

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS CRYSTAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70607

FILED

AUG 16 2017

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

ORDER OF AFFIRMANCE

Nicholas Crystal appeals from a judgment of conviction entered pursuant to a jury verdict of conspiracy to commit robbery, conspiracy to commit kidnapping, first-degree kidnapping resulting in substantial bodily harm, two counts of battery with the use of a deadly weapon resulting in substantial bodily harm, two counts of battery with intent to commit a crime, two counts of burglary while in possession of a deadly weapon, two counts of robbery with the use of a deadly weapon, two counts of grand larceny of a motor vehicle, and attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.


Crystal challenges the constitutionality of NRS 176.035(1), the statute which allows a district court to run the sentences for two or more offenses concurrently or consecutively. "The constitutionality of a statute is a question of law that we review de novo. Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity." *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 129 P.3d 682, 684 (2006) (footnotes omitted).


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Crystal claims NRS 176.035(1) violates the Due Process Clause of the United States and Nevada Constitutions because it fails to articulate any “pre-existing and reviewable criteria” to guide the district court in deciding whether to run multiple sentences concurrently or consecutively. We recently addressed this very same issue in *Pitmon v. State*, 131 Nev. ___, 352 P.3d 655 (2015), and we determined NRS 176.035(1) is not unconstitutionally vague and does not violate the Due Process Clause of the United States and Nevada Constitutions.

We conclude Crystal has not demonstrated *Pitmon* was wrongly decided nor shown NRS 176.035(1) is unconstitutional. To the extent he claims his sentences are unconstitutional as applied to him, we conclude the sentences imposed did not violate constitutional standards and the district court did not abuse its discretion by imposing count 4 to run consecutive to count 3 and count 10 to run consecutive to count 8. See NRS 176.035(1); NRS 193.165(1); NRS 193.330(1)(a)(1); NRS 199.480(1)(2); NRS 200.030(4) & (5); NRS 200.310(1)(b); NRS 200.380(2); NRS 200.400(2); NRS 200.481(2)(e)(2); NRS 205.060(4); NRS 205 228(3); *Pitmon*, 131 Nev. at ___, 352 P.3d at 657-58. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Turco & Draskovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk