

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDISON VALDEZ SOMERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77477-COA

FILED

SEP 30 2019

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

ORDER OF AFFIRMANCE

Edison Valdez Somera appeals from a judgment of conviction, pursuant to a guilty plea, of aggravated stalking; burglary while in possession of a firearm in violation of a temporary protective order; two counts of assault with a deadly weapon in violation of a temporary protective order; three counts of assault with the use of a deadly weapon; two counts child abuse, neglect, or endangerment with the use of a deadly weapon; two counts of first-degree kidnapping with the use of a deadly weapon in violation of a temporary protective order; two counts of first-degree kidnapping with the use of a deadly weapon; four counts of attempted murder with the use of a deadly weapon; burglary while in possession of a firearm; first-degree kidnapping with the use of a deadly weapon, victim 60 years of age or older; and eight counts of discharging a firearm from or within a structure or vehicle. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Somera claims the district court abused its discretion at sentencing by imposing an aggregate term of life with the possibility of parole after 20 years, and the aggregate sentence constitutes cruel and unusual punishment. Somera asserts the sentence is disproportionate to

the offenses committed and his individual character, the district court completely disregarded the recommendation by the Division of Parole and Probation, and the district court did not give meaningful consideration to mitigating factors such as his consistent work history, mental health ailments, and acceptance of responsibility.


The district court has wide discretion in its sentencing decision, *see Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and is not bound by the recommendations of the Division of Parole and Probation, *Dunham v. State*, 134 Nev., Adv. Op. 68, *10, 426 P.3d 11, 15 (2018). We will not interfere with the sentence imposed by the district court “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Regardless of its severity, “[a] sentence 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 sentences imposed are within the parameters provided by the relevant statutes, *see* NRS 193.165(1); NRS 193.166(1); NRS 193.167(1); NRS 193.330(1)(a)(1); NRS 200.010; NRS 200.030; NRS 200.320(2)(a); NRS 200.471(2)(b); NRS 200.508(1)(b); NRS 200.575(2); NRS 202.287(1)(b); NRS

205.060(4), and Somera does not allege that those statutes are unconstitutional. Somera also does not allege the district court relied on palpable or highly suspect evidence. And the record does not support Somera's contention that the district court did not give meaningful consideration to the mitigating factors he presented. We conclude the aggregate sentence imposed is not grossly disproportionate to the offenses committed and does not constitute cruel and unusual punishment and the district court did not abuse its discretion when imposing sentence. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk