IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES DAVID PLINSKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76735-COA

FILED

JAN 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles David Plinske appeals from a judgment of conviction entered pursuant to a guilty plea of eluding a peace officer with endangerment to persons or property. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

First, Plinske argues the district court erred by denying his presentence motion to withdraw his guilty plea. A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, "the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just." *Id.*

In his motion, Plinske claimed he should be permitted to withdraw his guilty plea because he did not have a complete understanding of the elements of the crime and the consequences he faced. In the written

plea agreement, Plinske acknowledged that he discussed the charge and its elements with his attorney and he understood the elements of the charge. In the written plea agreement and at the plea canvass, Plinske acknowledged he understood the potential sentence he faced and the district court had the discretion to impose the appropriate sentence. The district court concluded the totality of the circumstances did not demonstrate a fair and just reason to permit Plinske to withdraw his guilty plea. After review of the record, we conclude Plinske has not demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea. *See Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994) (reviewing the district court's denial of a motion to withdraw guilty plea for an abuse of discretion).

Second, Plinske argues the district court abused its discretion at sentencing by sentencing him to a prison term despite the recommendation in the presentence investigation report for him to be placed on probation. Plinske contends he had a minimal criminal history, family and community support, and mental illness. Plinske also asserts he only took the police vehicle because he believed he was in danger. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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).

The record reveals the district court was advised of Plinske's record, family support, mental health history, and the facts of the crime at

the sentencing hearing. The district court concluded a term of 24 to 60 months in prison was the appropriate sentence, which was within the parameters of the relevant statute. *See* NRS 484B.550(3). Moreover, the district court's decision to decline to impose a term of probation was within its discretion. *See* NRS 176A.100 (1)(c). In addition, 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]"). Considering the record before this court, we conclude Plinske fails to demonstrate the district court abused its discretion when imposing sentence.

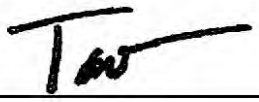
Third, Plinske argues his sentence constitutes cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense 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).

Plinske's sentence of 24 to 60 months in prison was within the parameters of the relevant statute, *see* NRS 484B.550(3), and Plinske does not allege that statute is unconstitutional. We conclude the sentence

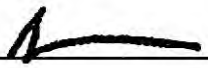
imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
Brent D. Percival
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk