

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE BORJA-RUIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77904-COA

FILED

JAN 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Borja-Ruiz appeals from a judgment of conviction, pursuant to a jury verdict, of four counts of sexual assault of a minor under 14 years of age and two counts of lewdness with a minor under 14 years of age. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Borja-Ruiz contends the district court abused its discretion by sentencing him to terms that, in the aggregate, are the functional equivalent of a sentence of life without the possibility of parole. We have consistently afforded the district court wide discretion in its sentencing decision. *See, e.g., Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). It is within the district court's discretion to impose consecutive sentences. *See NRS 176.035(1); Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015).


We will refrain from interfering 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). And, 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).

Borja-Ruiz was sentenced to 10 years to life in prison for each lewdness count and 35 years to life in prison for each sexual assault count. The district court ordered all counts to run consecutively. As Borja-Ruiz concedes, the sentences imposed are within the parameters provided by the relevant statutes. See NRS 200.366(3)(c); NRS 201.230(2). And Borja-Ruiz does not allege that those statutes are unconstitutional. Borja-Ruiz also concedes the district court did not rely on impalpable or highly suspect evidence. Having considered the sentence and the crime, 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. Jerome M. Polaha, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk