IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SALVADOR MIRANDA-CRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78340-COA

FILED

APR 22 2020

CLERK OF SUPREME COURT
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ORDER OF AFFIRMANCE

Salvador Miranda-Cruz appeals from a judgment of conviction entered pursuant to a guilty plea of coercion sexually motivated. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

First, Miranda-Cruz claims that his sentence constitutes cruel and unusual punishment for the following reasons: His prior convictions for child endangerment had been reversed. He lacked any substantial criminal history. He had been incarcerated for more than four years at the time of his sentencing. His psychosexual evaluation demonstrated that he presented a low risk to reoffend. And he should have been granted probation.

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).

Here, Miranda-Cruz' two- to six-year prison sentence falls within the parameters of the relevant statute, and he does not allege that the statute is unconstitutional. *See* NRS 207.190(2)(a). We note that the district court's decision to grant probation is discretionary. NRS 176A.100(1)(c). And we conclude the sentence imposed is not grossly disproportionate to his offense and does not constitute cruel and unusual punishment.

Second, Miranda-Cruz claims the district court abused its discretion at sentencing by relying upon incorrect information in the presentence investigation report (PSI). He asserts the district court knew that his judgment of conviction in district court case number C-15-304594-1 had been reversed.[1] And he argues the district court should have ordered a new PSI because the reversal may have affected the Division of Parole and Probation's sentencing recommendation.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). 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). An error that taints the PSI sentencing recommendation considered by the district court may constitute impalpable

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[1]*See Miranda-Cruz v. State*, Docket No. 70960 (Order of Reversal and Remand, December 28, 2018).

or highly suspect evidence. *Blankenship v. State*, 132 Nev. 500, 509, 375 P.3d 407, 413 (2016).

Here, the record demonstrates the district court expressly acknowledged that Miranda-Cruz' other case had been reversed and remanded, observed that he was no longer serving a sentence on that case, and asserted that it was "going to follow the negotiation." Based on this record, Miranda-Cruz has not demonstrated that the district court relied upon impalpable or highly suspect evidence, and we conclude the district court did not abuse its discretion at sentencing.

Having concluded Miranda-Cruz is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Makris Legal Services, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk