

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY GANCI, AKA
CHRISTOPHER GANCI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78529-COA

FILED

MAY 26 2020

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

ORDER OF AFFIRMANCE

Gregory Ganci appeals from a judgment of conviction entered pursuant to a guilty plea of ownership or possession of a firearm by a prohibited person and pursuant to a jury verdict of conspiracy to commit kidnapping, first-degree kidnapping with the use of a deadly weapon, conspiracy to commit robbery, robbery with the use of a deadly weapon, and battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Ganci was adjudicated a habitual criminal and sentenced to five consecutive prison terms and one concurrent prison term of life without the possibility parole. Relying upon the United States Supreme Court decision in *Solem v. Helm*, 463 U.S. 277 (1983), he argues that his sentence is grossly disproportionate to the gravity of his crimes and his criminal history. And he asserts that his sentence constitutes cruel and unusual punishment under the federal and state constitutions.

The Nevada Supreme Court addressed a similar claim in *Sims v. State*, 107 Nev. 438, 814 P.2d 63 (1991). It noted that "the *Solem* majority

observed that “[i]n view of the substantial deference that must be accorded legislatures and sentencing courts, a reviewing court rarely will be required to engage in extended analysis to determine that a sentence is not constitutionally disproportionate.” *Id.* at 439, 814 P.2d at 64 (quoting *Solem*, 463 U.S. at 290 n.16). And it rejected Sims’ cruel-and-unusual-punishment claim, stating,

The district court judge, who is far more familiar with Sims’ criminal background and attitude than the members of this court, sentenced Sims within the parameters of Nevada law. Although we may very well have imposed a different, more lenient sentence, we do not view the proper role of this court to be that of an appellate sentencing body. Moreover, because the Legislature has determined the sentencing limitations and alternatives that our district courts may impose on criminals who habitually offend society’s laws, we deem it presumptively improper for this court to superimpose its own views on sentences of incarceration lawfully pronounced by our sentencing judges.

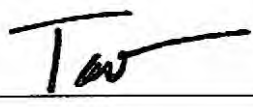
Id. at 440, 814 P.2d at 64.

Here, Ganci’s sentence falls within the parameters of the relevant statute, and he does not allege that the statute is unconstitutional. *See* NRS 207.010(1)(b)(1). We note the district court has 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). And we conclude the sentence imposed is not so grossly disproportionate to Ganci’s crimes and history of recidivism as to constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion) (“In weighing

the gravity of [the defendant's] offense, we must place on the scales not only his current felony, but also his long history of felony recidivism.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Valerie Adair, District Judge
Brown Mishler, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk