

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN MICHAEL MCKENDRICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79372-COA

FILED

SEP 28 2020

ELIZABETH L. BROWN
CLERK OF THE COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sean Michael McKendrick appeals from a judgment of conviction, entered pursuant to a guilty plea, of battery by a prisoner. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

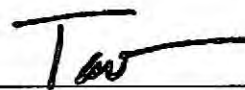
McKendrick contends the district court abused its discretion by imposing a sentence amounting to cruel and unusual punishment. Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence 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).

McKendrick was adjudicated a habitual criminal and sentenced to life in prison with the possibility of parole after 10 years. The sentence imposed is within the parameters provided by the relevant statute, see NRS 207.010, and McKendrick does not allege the statute is unconstitutional.

The sentencing judge based McKendrick's sentence on his history of multiple violent acts and the safety of the community. We conclude the sentence imposed is not grossly disproportionate to the crime and McKendrick's history of recidivism, and it does not constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk