IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENZEL DORSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79845-COA

ORDER OF AFFIRMANCE

Denzel Dorsey appeals from a judgment of conviction, entered pursuant to a guilty plea, of home invasion. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

First, Dorsey 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.* at 603, 354 P.3d at 1281. The district court's ruling on a presentence motion to withdraw a guilty plea "is discretionary and will not be reversed unless there has been a clear abuse of discretion." *State v. Second Judicial Dist. Court (Bernardelli),* 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

Dorsey claimed he should be allowed to withdraw his guilty plea because he was innocent of the crime charged. The district court held an

evidentiary hearing. After hearing testimony from Dorsey's and the State's witnesses, the district court found Dorsey's witnesses were not credible, considered the totality of the circumstances, and found there was no fair and just reason to permit the withdrawal of Dorsey's guilty plea. The record supports the district court's findings. *See Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) ("On matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion."), *abrogated on other grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000). Therefore, we conclude the district court did not abuse its discretion by denying this claim.[1]

Next, Dorsey argues he should either be allowed to withdraw his guilty plea or have his sentence modified because the written plea agreement "understated the possible punishment" and "incorrectly" stated he was "facing" a sentence of 60 to 120 months. Dorsey misstates the underlying facts. The written plea agreement stated that, if he failed to appear for any court dates or was arrested for any new offenses, Dorsey *stipulated* to a sentence of 60 to 120 months. The written plea agreement went on to correctly state the range of possible sentences under NRS 207.010 in the event Dorsey was adjudicated a habitual criminal. Therefore, we conclude Dorsey is not entitled to relief on this claim.[2]

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[1]Dorsey argues for the first time on appeal that he may not have been competent when he entered his guilty plea and counsel was ineffective for not investigating his competency. Because these arguments were not raised in the court below, we decline to consider them on appeal. *See Rimer v. State*, 131 Nev. 307, 328 n.3, 351 P.3d 697, 713 n.3 (2015).

[2]To the extent Dorsey challenged the legality of the stipulated sentence, we note that parties may negotiate for an infirm sentence. *See Breault v. State*, 116 Nev. 311, 314, 996 P.2d 888, 889 (2000). And Dorsey

Next, Dorsey argues the stipulated terms in his guilty plea agreement agreeing to "habitual criminal treatment" and the existence of the requisite prior convictions were unconstitutional. Dorsey's stipulation to the existence of the prior convictions necessary for habitual criminal adjudication was permissible. *See Hodges v. State*, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003). Dorsey's reliance on *McAnulty v. State*, 108 Nev. 179, 826 P.2d 567 (1992), and *Stanley v. State*, 106 Nev. 75, 787 P.2d 396 (1990), is misplaced as they have been explicitly overruled. *See Hodges*, 119 Nev. at 484, 78 P.3d at 70. Therefore, we conclude Dorsey is not entitled to relief on this claim.

Next, Dorsey argues the district court erred by sentencing him to an overly harsh and disproportionate sentence. 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 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

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does not allege the district court's deviation from the stipulated sentence was improper. *See* NRS 174.035(4); *Sandy v. Fifth Judicial Dist. Court*, 113 Nev. 435, 440 n.1, 935 P.2d 1148, 1151 n.1 (1997) ("[T]rial judges need not accept sentence bargains.").

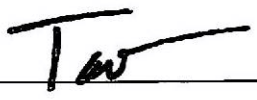
220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The 60-to-150-month prison sentence imposed is within the parameters provided by the relevant statute. *See* NRS 207.010(1)(a). Dorsey does not allege that this statute is unconstitutional. Dorsey also does not allege that the district court relied 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, it does not constitute cruel and unusual punishment, and the district court did not abuse its discretion when imposing sentence.

Finally, Dorsey argues the cumulative effect of the errors in this case warrants reversal. As Dorsey has identified no errors, we conclude there are no errors to cumulate. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk