

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARTIN JOHN BORDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81527-COA

FILED

MAR 30 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Martin John Borden appeals from a judgment of conviction entered pursuant to a guilty plea of four counts of attempted sexual assault on a child under 14 years of age. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Borden claims the district court erred by sentencing him to four consecutive terms of 84 to 240 months in prison. Borden also claims the sentences amount to cruel and unusual punishment because they are manifestly disproportionate to the seriousness of the offenses.


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); *see also Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . ."). This court will refrain from interfering with the sentence imposed "[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). Further, 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).

The sentences imposed are within the parameters provided by the relevant statutes, see NRS 193.330(1)(a)(1); NRS 200.366(3)(c), and Borden does not allege that those statutes are unconstitutional. Borden also does not allege the district court relied on impalpable or highly suspect evidence. We have considered the sentences and the crimes, and we conclude the sentences imposed are not grossly disproportionate to the crimes, they do not constitute cruel and unusual punishment, and the district court did not abuse its discretion by imposing consecutive sentences. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk