IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID EDWARD ELLISTON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83217-COA

ORDER OF AFFIRMANCE

David Edward Elliston, Jr., appeals from a judgment of conviction, entered pursuant to an *Alford*[1] plea, of two counts of trafficking in a schedule I controlled substance and one count of ex-felon in possession of a firearm. First Judicial District Court, Carson City; James Todd Russell, Judge.

Elliston claims the district court abused its discretion by imposing consecutive prison sentences despite then-upcoming changes to Nevada criminal law and evidence presented at sentencing in mitigation. Elliston also claims that his sentences constitute cruel and unusual punishment.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

sentencing statutes "[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); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). 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).

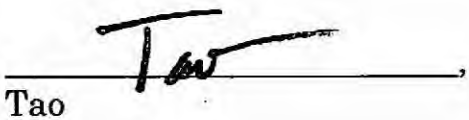
Elliston's consecutive prison sentences of 24 to 180 months for the trafficking counts and 24 to 60 months for the ex-felon-in-possession count are within the parameters provided by the relevant statutes, *see* NRS 202.360(1); 2015 Nev. Stat, ch. 506, § 6, at 3088 (former NRS 453.3385(1)(b)), and Elliston does not allege that those statutes are unconstitutional. Further, Elliston stipulated to consecutive sentences. Finally, Elliston appears to allege the district court relied on impalpable or highly suspect evidence, but he fails to identify any facts the district court improperly relied on. Having considered the sentences and the crimes, 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 when imposing consecutive

sentences. Therefore, we conclude Elliston is not entitled to relief on these claims.

Elliston also claims the State's filing of its notice of habitual offender enhancement shortly before trial was coercive. Elliston does not allege that the State's notice was untimely, and a guilty plea is not coerced merely because it is motivated by a desire to avoid the possibility of a higher penalty. *See Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974). Therefore, we conclude Elliston is not entitled to relief on this claim, and we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Karla K. Butko
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk