IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALBERTO TORRES CARO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84119-COA

ORDER OF AFFIRMANCE

Alberto Torres Caro appeals from a judgment of conviction, entered pursuant to a guilty plea, of eluding a police officer. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Caro argues the district court abused its discretion at sentencing by failing to consider his substance abuse evaluation and his mental health issues and childhood trauma discussed therein, that he had never been given the opportunity for treatment, and that he had been accepted into a treatment program. Caro claims that had the district court considered this evidence, he would not have been sentenced to a prison term and his sentence would not have been run consecutive to his other case. Further, he claims that his sentence constituted 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). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant 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). The granting of probation is discretionary, *see* NRS 176A.100(1)(c), and 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).

The sentence of 19 to 48 months is within the parameters provided by the relevant statute, *see* NRS 484B.550(3), and Caro does not allege that the statute is unconstitutional. Caro also does not demonstrate the district court relied on impalpable or highly suspect evidence. The district court specifically stated it considered the substance abuse evaluation, Caro's presentence investigation letter, letters in support of Caro, and the fact that Caro lost his younger brother. We have considered the sentence and the crime, and 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 the prison term or by imposing the sentence to run consecutively to another case.[1] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[1]Caro seeks to overrule Nevada Supreme Court precedent and to provide for more stringent review of discretionary sentencing decisions. However, this court cannot overrule Nevada Supreme Court precedent. *See People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (quotation marks and internal punctuation omitted)); *see also Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court").