IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RUSSELL WAYNE RIPSOM, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 84120-COA
RUSSELL WAYNE RIPSOM, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 84121-COA

ORDER OF AFFIRMANCE

Russell Wayne Ripsom appeals from two judgments of conviction entered pursuant to guilty pleas. In both cases, Ripsom was convicted of burglary, first offense. These cases were consolidated on appeal. *See* NRAP 3(b). Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Ripsom argues that the district court abused its discretion because he was given a lengthy prison term in each case instead of being placed on probation and in a treatment program. He claims the district court should not have considered his addiction relapse prior to sentencing when imposing sentence. He also claims the district court's belief that he may have been under the influence at his first sentencing hearing constituted suspect evidence. Finally, he claims his sentence constitutes cruel and unusual punishment.

The granting of probation or placement in a court treatment program is discretionary. *See* NRS 176A.100(1)(c); NRS 176A.240(1); *Houk*

v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . ."). 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). 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).

Ripsom fails to demonstrate that it was improper for the district court to consider his relapse that occurred one week prior to sentencing. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) ("Few limitations are imposed on a judge's right to consider evidence in imposing sentence."). Further, Ripsom does not demonstrate that the district court relied on impalpable or highly suspect evidence at sentencing regarding his possibly being under the influence of drugs at the previous sentencing hearing that was continued. The district court was informed that Ripsom ultimately tested negative, and the district court did not indicate that its prior concern that Ripsom was under the influence of drugs affected the imposition of sentence.

Finally, Ripsom's consecutive sentences of 24 to 70 months in prison and 40 to 100 months in prison are within the parameters provided by the relevant statute, *see* NRS 205.060(2)(d), and Ripsom does not allege that this statute is unconstitutional. The district court considered Ripsom's desire for treatment in relation to Ripsom's other previous failures at treatment and considered the facts of each case when imposing sentence. In district court case no. CR21-0124 (Docket No. 84120), Ripsom stole firearms from his roommate. In district court case no. CR21-0148 (Docket No. 84121), Ripsom stole purses and other items from an occupied house. The district court found these crimes to have been dangerous and, with Ripsom's prior failures at treatment, determined that a lengthy prison sentence was necessary to protect the public. Therefore, we conclude the district court did not abuse its discretion by declining to suspend the sentences and place Ripsom on probation and in a treatment program. Further, we conclude the sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgments of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk