

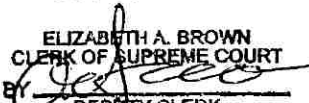
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PHILLIP DEWAYNE NICHOLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84883-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND REMANDING TO CORRECT
JUDGMENT OF CONVICTION*

Phillip Dewayne Nichols appeals from a judgment of conviction, entered pursuant to a guilty plea, of two counts of attempted murder, battery with the use of a deadly weapon resulting in substantial bodily harm, two counts of assault with the use of a deadly weapon, and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Nichols argues his minimum sentence amounts to cruel and unusual punishment because he was not the initial aggressor, was severely injured in the attack, and suffers from mental health and substance abuse issues. 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).

Nichols was sentenced to prison as follows: 6 to 15 years for each of the attempted murder counts, 6 to 15 years for the battery count, 2 to 5 years for the prohibited-person count, and 28 to 72 months for each of the assault counts. The district court imposed an aggregated total of 8 to 20 years in prison. The sentences imposed are within the parameters provided by the relevant statutes, *see* NRS 193.153(1)(a)(1) (previously NRS 193.330); NRS 200.030(4); NRS 200.471(2)(b); NRS 200.481(2)(e)(2); NRS 202.360(1), and Nichols does not allege that those statutes are unconstitutional. In addition, the district court acknowledged at sentencing that Nichols was not the initial aggressor. The court also considered Nichols' injuries and his mental health and substance abuse history before imposing Nichols' sentence. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Nichols also argues that the district court erred by relying on prejudicial assertions made by the State at sentencing. The State argued that Nichols sold drugs and conducted prostitution-related activities prior to the offenses at issue. "A district court is vested with wide discretion regarding sentencing," and "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). However, "this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Id.* During his allocution, Nichols explicitly disputed that he sold drugs or engaged in prostitution-related activities, and his counsel took exception to the State's allegations without evidence having been presented. Nothing in

the record before this court suggests that the district court considered or was influenced by the challenged comments. Therefore, we conclude the district court did not abuse its discretion at sentencing.

Finally, a review of the record on appeal reveals that the judgment of conviction contains a clerical error. It incorrectly cites NRS 202.362 for Nichols' prohibited-person count. The correct statute is NRS 202.360. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the district court, upon remand, to enter a corrected judgment of conviction containing the correct sentencing statute corresponding to Nichols' offense. *See* NRS 176.105(1)(c). For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED and REMAND to the district court to correct the judgment of conviction.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk