

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN GUILLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85534-COA

FILED

JUN 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

BRIAN GUILLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85535-COA

ORDER OF AFFIRMANCE

Brian Guillen appeals from two judgments of conviction, both entered pursuant to a guilty plea of felon in possession of a firearm. These cases were consolidated on appeal. *See* NRAP 3(b). Second Judicial District Court, Washoe County; Lynne K. Simons, Chief Judge.

Guillen first argues that his sentences constitute cruel and unusual punishment. Guillen contends that his sentences are excessive, unfair, and disproportionate to his offenses. Guillen also asserts that he should have received shorter sentences in light of his mitigation information. In addition, citing to the dissent in *Tanksley v. State* for support, Guillen argues that this court should review the sentences imposed by the district court to determine whether justice was done. 113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

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 district court imposed both sentences at the same sentencing hearing. At the sentencing hearing, the district court listened to the arguments of the parties. Guillen explained to the district court that he cooperated with law enforcement in a different criminal matter, he showed remorse, he wished to better himself and care for his young children, and he had been accepted into a residential recovery program. Guillen also stated he was remorseful for his actions and that he suffered from substance abuse problems. Guillen urged the district court to suspend his prison sentence and place him on probation.

The district court stated that it balanced the information Guillen provided at the sentencing hearing with his offenses and his prior criminal history. The district court ultimately decided to deny Guillen’s request for probation and to sentence him to consecutive terms of 24 to 60 months in prison.

The sentences imposed are within the parameters provided by the relevant statutes, see NRS 176.035(1); NRS 202.360(1), and Guillen does not allege that those statutes are unconstitutional. And Guillen does not demonstrate that this court should review the sentences imposed by the district court to determine whether justice was done. We conclude the

sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment.


Second, Guillen argues that the district court judge was not impartial and exhibited bias because she based her sentencing decisions on Guillen's prior criminal history and did not consider his mitigating information.

We presume a district court judge is impartial, and therefore, Guillen has the burden of demonstrating disqualification was warranted. *See Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). "[T]he test for whether a judge's impartiality might reasonably be questioned is objective and presents a question of law [such that] this court will exercise its independent judgment of the undisputed facts." *Id.* (alterations in original, quotation marks and internal citations omitted). Disqualification is required when "a reasonable person, knowing all the facts, would harbor reasonable doubts about [the judge's] impartiality." *Id.* (alteration in the original). "In addition, remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

As stated previously, the district court listened to the arguments of the parties and Guillen's mitigation information. The district court acknowledged Guillen's mitigation information by stating that it balanced that information with Guillen's offenses and his prior criminal history. Because the record shows that the district court reviewed and considered Guillen's arguments and mitigation information at the sentencing hearing, Guillen does not demonstrate that the district court

closed its mind to the presentation of all of the evidence. Therefore, Guillen fails to demonstrate that there are reasonable doubts about the district court judge's impartiality. Accordingly, we conclude that Guillen is not entitled to relief based on this claim, and we

ORDER the judgments of conviction AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

cc: Hon. Lynne K. Simons, Chief Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.