IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER, A/K/A JUG CAPRI PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85782

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of burglary while in possession of a deadly weapon, two counts of first-degree kidnapping with the use of a deadly weapon, four counts of sexual assault with the use of a deadly weapon, one count of first-degree kidnapping with the use of a deadly weapon resulting in substantial bodily harm, two counts of sexual assault with the use of a deadly weapon resulting in substantial bodily harm, one count of attempted murder with the use of a deadly weapon, four counts of robbery with the use of a deadly weapon, one count of first-degree arson, one count of sexual assault of a victim 65 years of age or older with the use of a deadly weapon, three counts of robbery of a victim 65 years of age or older with the use of a deadly weapon, one count of second-degree kidnapping with the use of a deadly weapon, two counts of attempted robbery with the use of a deadly weapon, and one count of battery. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

In 2001, the State charged appellant Justin Porter for offenses stemming from a series of residential break-ins that took place in 2000, when Porter was 17 years old. One of these break-ins resulted in the victim's death. The district court granted Porter's motion to sever the

charges related to the homicide. In 2009, Porter went to trial on those charges and was convicted of second-degree murder with the use of a deadly weapon. This court affirmed the judgment of conviction. *Porter v. State*, No. 54866, 2010 WL 4537736 (Nev. Nov. 8, 2010) (Order of Affirmance). In 2022, Porter went to trial on the remaining charges and was convicted of 29 felonies and 1 gross misdemeanor. Porter now appeals from the judgment of conviction stemming from that trial. Porter raises four arguments.

First, Porter argues that his constitutional right to a speedy trial was violated. "In evaluating whether a defendant's Sixth Amendment right to a speedy trial has been violated, this court gives deference to the district court's factual findings and reviews them for clear error, but reviews the court's legal conclusions de novo." *State v. Inzunza*, 135 Nev. 513, 516, 454 P.3d 727, 730-31 (2019). There is no fixed time that indicates when the right to a speedy trial has been violated; rather, the right is assessed in relation to the circumstances of each case. *Barker v. Wingo*, 407 U.S. 514, 521-22 (1972). We apply the four-factor test set out in *Barker v. Wingo*, 407 U.S. 514 (1972), and clarified in *Doggett v. United States*, 505 U.S. 647 (1992). The *Barker* factors include: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the speedy trial right, and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530. The factors are considered together, and no single factor is determinative. *Inzunza*, 135 Nev. at 516, 454 P.3d at 731.

Here, the State concedes that the length of delay (the first factor) between Porter's arraignment and trial is presumptively prejudicial. *Barker*, 407 U.S. at 530 (explaining that the first factor triggers further analysis only if a defendant shows a delay of sufficient duration to be considered "presumptively prejudicial"); *Inzunza*, 135 Nev. at 516, 454 P.3d

at 731 ("A post-accusation delay meets this standard as it approaches one year." (internal quotation marks omitted)). Further, Porter contends that he asserted his constitutional right to a speedy trial (the third factor) in 2007, 2010, 2017, and 2019.

As to the second factor, the reason for the delay, the record supports the district court's findings that Porter was responsible for the majority of the delay.[1] *See Inzunza*, 135 Nev. at 517, 454 P.3d at 731 (stating that whether the State is responsible for a delay in bringing a case to trial "is the focal inquiry in a speedy trial challenge" (internal quotation marks omitted)). The record shows that the district court granted multiple continuances on account of the defense, for reasons that include Porter's pretrial motions, the schedules of defense counsel and witnesses, conflicts between Porter and his appointed counsel, and the appointment of new counsel. *See Vermont v. Brillon*, 556 U.S. 81, 91 (2009) ("[D]elay caused by the defendant's counsel is also charged against the defendant"). Additionally, the COVID-19 pandemic resulted in further delays between 2020 and 2022. In comparison, any delays caused by the State or the district court's calendar were minor. Therefore, the State was not responsible for any significant part of the delay. *See Bates v. State*, 84 Nev. 43, 46, 436 P.2d 27, 29 (1968) (holding that appellant could not complain of a speedy trial violation where "[a]ll the procedural delays complained of were either ordered for good cause or were directly or indirectly occasioned by the motions, stipulations, waivers, tactics, acquiescence and conduct of the

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[1]The appendices filed by Porter do not include relevant portions of the trial record concerning some of the continuances. "[W]e necessarily presume that the missing portion supports the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

appellant"); *Furbay v. State*, 116 Nev. 481, 485, 998 P.2d 553, 555-56 (2000) (concluding that a lengthy delay between arrest and trial did not violate the defendant's constitutional speedy trial right where "all but one of the [nine] continuances were for good cause or were occasioned by defense motions or tactics").

As to the fourth factor, prejudice to the defendant, Porter's bare claims of prejudice do not demonstrate a reasonable possibility that his defense was impaired or that he suffered significant prejudice as a result of the delay. *See Sheriff v. Berman*, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983) ("Bare allegations of impairment of memory, witness unavailability, or anxiety, unsupported by affidavits or other offers of proof, do not demonstrate a reasonable possibility that the defense will be impaired at trial or that defendants have suffered other significant prejudice."). Considering the relevant factors, we conclude that Porter has not demonstrated a violation of his constitutional right to a speedy trial.

Second, Porter asserts that the sentence imposed constitutes cruel and unusual punishment and is grossly disproportionate to the crimes. Porter contends that the district court's aggregate sentence of 126 years to life is an impermissible sentence for a juvenile nonhomicide offender, as it is the functional equivalent of life without the possibility of parole. We disagree because NRS 213.12135(1) provides Porter with the opportunity for parole. *See State v. Boston*, 131 Nev. 981, 990, 363 P.3d 453, 459 (2015) (applying NRS 213.12135 to aggregate consecutive sentences). Thus, Porter has not shown that relief is warranted. Further, the district court sentenced Porter within the statutory parameters, *see* NRS 193.153; NRS 193.165; NRS 193.167; NRS 200.030; NRS 200.320; NRS 200.366; NRS 200.380; NRS 200.481; NRS 205.010; NRS 205.060; *see also* NRS 176.035(1)

(providing that district courts have discretion to run sentences consecutively or concurrently), and we are not convinced that the sentence imposed is so unreasonably disproportionate to the offenses as to shock the conscience.[2] *See Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (explaining that regardless of its severity, "[a] sentence within the statutory limits is not cruel and unusual punishment unless . . . the sentence is so unreasonably disproportionate to the offense as to shock the conscience" (internal quotation marks omitted)). We therefore conclude that Porter's sentence does not constitute cruel and unusual punishment.

Third, Porter asserts that the sentence was illegally imposed because the district court did not consider the differences between juvenile and adult offenders as required by NRS 176.017.[3] We disagree. NRS 176.017 applies when a defendant is convicted as an adult of an offense committed as a juvenile. It requires the district court to consider the difference between juvenile and adult offenders when imposing its sentence. NRS 176.017(1). The statute does not, however, indicate that the district court must explicitly state that it has taken those factors into account at the time of sentencing or indicate how they have affected the sentence being imposed. Here, Porter acknowledges that his age at the time the crimes were committed was discussed in Porter's sentencing memorandum and at the sentencing hearing. Porter does not provide any evidence suggesting

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[2]To the extent Porter argues the sentence is excessive, this court does "not review nondeath sentences for excessiveness." *Harte v. State*, 132 Nev. 410, 415, 373 P.3d 98, 102 (2016).

[3]NRS 176.017 applies to offenses that were committed before October 1, 2015, if the offender is convicted on or after October 1, 2015. *See* 2015 Nev. Stat., ch. 152, § 5, at 619.

that the district court ignored these facts or otherwise failed to consider the guidelines set forth in NRS 176.017.

Finally, Porter argues cumulative error requires reversal. *See Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000) (stating the relevant factors to consider for a claim of cumulative error). As we have found no errors, there is nothing to accumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Jacqueline M. Bluth, District Judge
Oronoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk