IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS JAMES STONE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88199-COA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Thomas James Stone, Jr., appeals from an amended judgment of conviction, entered pursuant to a plea of nolo contendere, of felony attempted domestic battery by strangulation. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Stone argues that his sentence amounts to cruel and unusual punishment because the district court imposed a 19-to-48-month prison sentence instead of granting Stone probation, which was jointly recommended by the parties as part of the plea agreement.[1]

Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing

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[1]The written plea agreement provided that "the parties have agreed to jointly recommend that this offense be treated as a felony" and that Stone "be granted probation with an underlying" prison sentence of 19-to-48 months, and the parties did not depart from the negotiations at sentencing.

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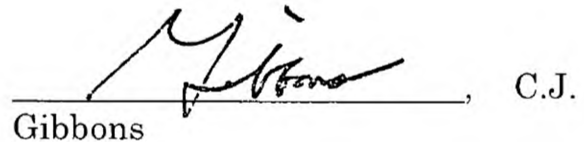
punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 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). Further, absent entry of a conditional plea based upon the court's acceptance of the parties' sentencing recommendation or the judge's expression of an inclination to follow the parties' sentencing recommendation, the court is not bound by the parties' sentencing recommendations. *See* NRS 174.035(4); *cf. Cripps v. State*, 122 Nev. 764, 771, 137 P.3d 1187, 1191-92 (2006). And in this matter, the granting of probation was discretionary. *See* NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . .").

Here, the sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d); NRS 193.153(1)(a)(4); NRS 200.485(2), and Stone does not allege that those statutes are unconstitutional. Further, in the written plea agreement Stone acknowledged that he had not been promised or guaranteed a particular sentence and that the district court was not obligated to accept the parties'

sentencing recommendation. Moreover, Stone did not allege that, prior to entry of his plea, the district court expressed an inclination to accept the parties' recommended sentence. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the amended judgment of conviction AFFIRMED.



_______________________, C.J.
Gibbons

_______________________, J.
Bulla

_______________________, J.
Westbrook

cc: Hon. Robert W. Lane, District Judge
Jason Earnest Law, LLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk