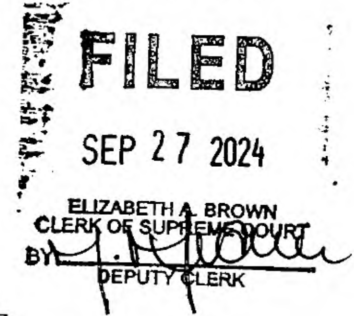
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ANTHONY DUREN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87035-COA



ORDER OF AFFIRMANCE

Michael Anthony Duren appeals from a judgment of conviction, entered pursuant to a guilty plea, of robbery. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Duren makes several arguments against the district court's imposition of a 72-to-180-month sentence. For the crime, Duren robbed a Dairy Queen. He entered the restaurant with a large metal rod and threatened to hit and kill the cashier if she did not give him the money in the till. As he left, he threatened the cashier that he would find her and kill her if she called the police.

Duren argues his sentence constitutes cruel and unusual punishment. 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*,

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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 sentence imposed is within the parameters provided by the relevant statute, *see* NRS 200.380(2), and Duren does not allege that statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Thus, Duren is not entitled to relief on this claim.

Next, Duren claims the district court abused its discretion by not granting him probation or allowing him to seek substance abuse treatment. Duren argues he presented ample mitigation evidence that would have qualified him for probation: he was 47 years old and only had one prior felony conviction; he was intoxicated at the time of the robbery; he was accepted into a treatment program; and the victim did not sustain any physical injury or appear at sentencing. He also argued that, at some point in his life, he worked as a sushi chef for 11 years and completed three years of college and that he had been attending mental health and substance abuse counseling from the age of 25.

The granting of probation in this case 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 . . . ."). 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

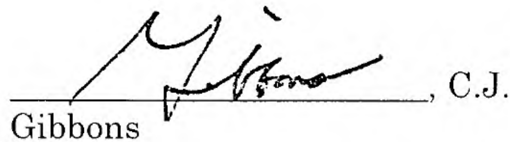
resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

As stated above, Duren's sentence was within the parameters provided by the relevant statutes, and Duren does not allege that the district court relied on impalpable or highly suspect evidence. The district court found that the seriousness of the crime warranted a sentence of 72 to 180 months in prison. Considering the district court's reasoning and the facts of the crime, we conclude the district court did not abuse its discretion by declining Duren's request for probation or treatment in a facility.

Finally, Duren argues that, by denying him probation, the district court demonstrated it had closed its mind to the presentation of mitigation evidence, and thus, the district court was biased. Duren fails to demonstrate the district court was biased against him. The record does not indicate that the district court's decision was based on knowledge acquired outside of the proceedings, and the decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (quotation marks omitted); *see also In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for

disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). Therefore, we conclude Duren is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_______________, C.J.
Gibbons

_______________, J.
Bulla

_______________, J.
Westbrook

cc: Hon. Robert W. Lane, District Judge
Shahani Law, Ltd.
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk