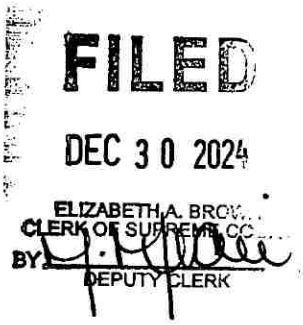
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAYTRAVONTE DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88634-COA



ORDER OF AFFIRMANCE

Jaytravonte Davis appeals from a judgment of conviction, entered pursuant to a guilty plea, of pandering and living from the earnings of a prostitute. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Davis argues that his sentence of 24 to 60 months in prison with a concurrent prison term of 19 to 48 months 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*, 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 statutes, *see* NRS 193.130(2)(c); NRS 201.300(1); NRS 201.320(1)(a), and Davis does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crimes and does not constitute cruel and unusual punishment. Therefore, Davis is not entitled to relief on this claim.

Davis also appears to argue that the district court abused its discretion by imposing a prison term rather than probation. 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 . . . ."). 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, Davis's sentence is within the parameters provided by the relevant statutes, and he does not allege that the district court relied on impalpable or highly suspect evidence. At sentencing, the district court listened to Davis's mitigation arguments but indicated it was concerned with Davis's prior criminal history, the jail phone calls he made to the victim, and the facts of the crime. These were properly considered by the district court, and we conclude the district court did not abuse its

discretion by declining to suspend the sentence and place Davis on probation. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Law Office of Rachael E. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk