

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALVIN JAY VONGVILAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88720-COA

FILED

JAN 13 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Alvin Jay Vongvilay appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

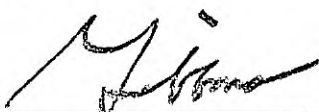
Vongvilay claims his sentence amounts to cruel and unusual punishment because the State failed to prove the victim suffered substantial bodily harm and because Vongvilay presented compelling mitigating evidence at sentencing, including the fact that he had stayed out of trouble for over a decade and that he immediately accepted responsibility for his actions. 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).

Vongvilay's 19-to-48-month prison sentence is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d); NRS 193.153(1)(a)(4); NRS 200.481(2)(b), and Vongvilay does not allege that those statutes are unconstitutional. The record reflects that the victim suffered a brain bleed—a fact the district court noted before imposing Vongvilay's sentence—and Vongvilay did not dispute that the victim had a brain bleed below. Further, the district court acknowledged that Vongvilay had not “gotten in trouble for a significant amount of time.” It clarified that its sentencing decision was based on more than just the victim's injuries but also on the fact that Vongvilay had so much to lose in light of his criminal history yet chose to re-engage in the confrontation. In light of these circumstances, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk