IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARON S. DOWNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90583-COA

FILED
SEP 29 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Aaron S. Downing appeals from a judgment of conviction, entered pursuant to an *Alford*[1] plea, of attempted unauthorized absence constituting escape from prison. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Downing contends that his sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. He asserts that the State's failure to transport him to hearings resulted in delays in the imposition of his sentence and the district court's failure to account for those delays violated fundamental fairness.

A district court's sentencing decision is reviewed for an abuse of discretion. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Typically, a sentence that is within the statutory limits is not considered a cruel and unusual punishment. *Id.* However, a statutorily

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970). We note that an *Alford* plea is the equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

permissible sentence may constitute cruel and unusual punishment in violation of the Eighth Amendment if it is "so unreasonably disproportionate to the offense as to shock the conscience." *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); *see also Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment) (plurality opinion) (explaining that the Eighth Amendment does not require strict proportionality between crime and sentence).

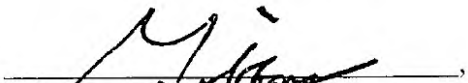
Downing does not argue that his sentence was disproportionate to his offenses or that it, in and of itself, shocks the conscience. Instead, he asserts that it was fundamentally unfair for the district court to decline to provide credit against his sentence for the transportation delays that occurred before he pleaded guilty. We disagree.

The district court did not have authority to grant presentence credit to account for transportation delays in this case. Downing was serving a sentence of imprisonment at the time of the offense and during the pendency of the district court proceedings. Accordingly, the district court could not grant presentence credit in the instant case because Downing was confined pursuant to a judgment of conviction for another offense. *See* NRS 176.055(1). Nor could the district court provide for the instant sentence to begin any sooner than upon the completion of Downing's sentence for the prior offense. Because Downing was under a sentence of imprisonment when he committed the instant offense, the district court properly imposed the term in this matter consecutive to that for the term for Downing's prior offense. *See* NRS 176.035(3). Thus, Downing cannot demonstrate that any delays in his sentencing affected the overall length of his sentence. To the extent he asserts that delays caused by the State were

unfair and he is thus entitled to relief, the delays occurred prior to entry of his plea, and Downing thus forfeited those issues with the entry of his *Alford* plea. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975); *accord Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk