

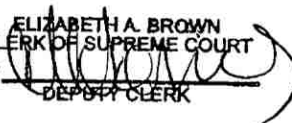
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN APPLING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88702-COA

FILED

NOV 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathan Appling appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appling argues the district court abused its discretion by imposing the maximum sentence and that his sentence constitutes cruel and unusual punishment in light of the mitigating evidence presented. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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). Regardless of its severity, “[a] sentence within the statutory limits

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

25 494 14

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).

Appling’s consecutive sentences of 4 to 10 years in prison are within the parameters provided by the relevant statutes, *see* NRS 193.165; NRS 200.080, and Appling does not allege that those statutes are unconstitutional. Contrary to Appling’s assertion, the record does not indicate the district court failed to consider any of the arguments or mitigating evidence before it, including Appling’s arguments that he was innocent and that the evidence of his guilt was “dubious” or conflicting. Rather, the district court simply determined that the mitigation presented did not warrant a reduced sentence.²

²Appling appears to contend that evidence of his guilt was impalpable or highly suspect such that the district court was precluded from considering it. However, Appling acknowledged in his plea agreement and at sentencing that the State had sufficient evidence to prove his guilt at trial, and the district court was permitted to treat Appling as if he were guilty. *See 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); *see also Carroll v. Commonwealth*, 682 S.E.2d 92, 101 (Va. Ct. App. 2009) (“While *Alford* pleas are rare, from the State’s perspective they are no different from other guilty pleas; it would otherwise be unconscionable for a court to sentence an individual to a term of imprisonment.” (quotation marks omitted)).

Appling also contends the State erroneously argued the victim's killing was a "murder" when the parties stipulated to the reduced charge of voluntary manslaughter and that he committed additional crimes between 2013 and the instant arrest. The Nevada Supreme Court has not limited the facts that a sentencing court may consider to only those included within a charging document or in a plea agreement. *See Denson v. State*, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (stating a district court may consider prior uncharged crimes during sentencing); *Silks*, 92 Nev. at 94 n.2, 545 P.2d at 1161 n.2 (recognizing a district court may consider "other criminal conduct . . . , even though the defendant was never charged with it or convicted of it" (quotation marks omitted)). Appling also confirmed in the plea agreement that he understood the sentencing judge could consider "information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement."

Furthermore, the State's argument that Appling had "probably" not remained "trouble free" was reasonably based on the discovery of forgery items hidden inside a secret compartment in his residence, for which he was being prosecuted in a separate criminal case. Although Appling denied having knowledge of these items, such denial does not render evidence related to that offense impalpable or highly suspect. Therefore, Appling fails to demonstrate the district court relied on impalpable or highly suspect evidence in imposing his sentence. *See Randell v. State*, 109 Nev. 5, 7-8,

To the extent Appling attempts to challenge the factual basis for his plea, this court will generally not consider such a claim on direct appeal from a judgment of conviction, *see Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994), and Appling fails to demonstrate an exception to the general rule applies here.

846 P.2d 278, 280 (1993) ("Judges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence." (brackets and internal quotation marks omitted)). Moreover, the record does not reflect that the district court punished Applying for any uncharged offense. *See Denson*, 112 Nev. at 494, 915 P.2d at 287 ("While a district court has wide discretion to consider prior uncharged crimes during sentencing, the district court must refrain from punishing a defendant for prior uncharged crimes.").

We have considered the sentence and the crime, and we conclude the sentence imposed is not grossly disproportionate to the crime, it does not constitute cruel and unusual punishment, and the district court did not abuse its discretion when imposing sentence. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Attorney General/Carson City
Clark County District Attorney
Gaffney Law
Eighth District Court Clerk