IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRISHAUNA YVONE KELLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90381-COA

ORDER OF AFFIRMANCE

Brishauna Yvone Kelly appeals from a judgment of conviction, entered pursuant to a guilty plea, of comprehensive theft, value of $5000 or more but less than $25,000. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

Kelly argues that the district court abused its discretion at sentencing by failing to consider her mitigating evidence and that her sentence constitutes cruel and unusual punishment. She argues her sentence is disproportionate to the crime and her mitigating evidence demonstrated her sentence should have been less severe.

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 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).

After Kelly was adjudicated a habitual criminal, the district court imposed a sentence of 10 to 25 years in prison, which was within the parameters provided by the relevant statute, *see* NRS 207.010(1)(b), and Kelly does not allege that the statute is unconstitutional. Kelly also does not allege the district court relied on impalpable or highly suspect evidence. Thus, Kelly fails to demonstrate the district court abused its discretion when imposing sentence. Further, we have considered the sentence and the crime, and we conclude the sentence imposed is not disproportionate to the crime and Kelly's history of recidivism and thus does not constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion) (explaining "the State's interest is not merely punishing the offense of conviction, or the triggering offense," as there is an additional interest "in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to

the norms of society as established by its criminal law" (internal quotation marks omitted)). Therefore, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

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