

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAUN KEKONA MORENO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56497

**FILED**

**APR 06 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
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ORDER OF AFFIRMANCE

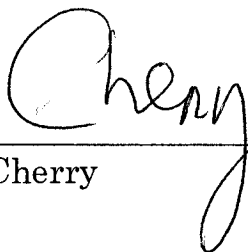
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

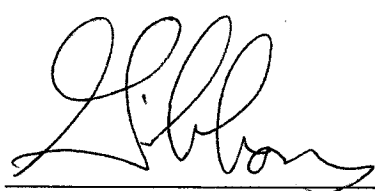
Appellant Shaun Kekona Moreno claims that his sentence constitutes cruel and unusual punishment because it is disproportionate to his crime. We will not disturb the district court's sentencing determination "absent a showing of abuse of discretion." Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The district court adjudicated Moreno under the small habitual criminal statute and sentenced him to a term of 96-240 months. See NRS 207.010(1)(a). The sentence is within the statutory limits and Moreno has not alleged that the sentencing statute is unconstitutional. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). The district court was presented proof of at least three of Moreno's prior felony convictions, and "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). We conclude that the sentence is not grossly disproportionate to the offense for purposes of the constitutional prohibitions against cruel


and unusual punishment, see Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume, 112 Nev. at 475, 915 P.2d at 284, and the district court did not abuse its discretion.

To the extent Moreno attempts to appeal from the district court's denial of his proper person "Motion to Dismiss for Voluntary Statement Made Under Duress and or Compulsion," Moreno waived his right to raise this claim by entering a guilty plea and he did not reserve the issue for review on appeal. See NRS 174.035(3); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). And to the extent Moreno attempts to raise claims of ineffective assistance of counsel, such claims are not properly raised on direct appeal from a judgment of conviction and must be pursued in the district court in the first instance by way of a post-conviction proceeding. See NRS 34.810(1)(a); Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Therefore, we decline to consider the merits of these claims, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Doug Smith, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk