

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACY EVANS A/K/A TRACY
LORENZO POLLARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63928

FILED

MAR 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

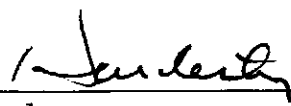
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Tracy Evans contends that the district court abused its discretion by sentencing him to a term of 26 to 120 months imprisonment because it is too harsh under the circumstances, resulting in cruel and unusual punishment. We disagree.

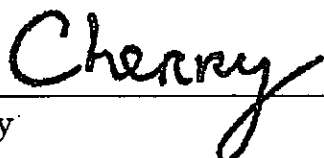
We have consistently afforded the district court wide discretion in its sentencing decision, *see, e.g., Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and will refrain from interfering with the sentence imposed by the district court “[s]o long as the record does not demonstrate prejudice 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). Regardless of its severity, a sentence that is 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 that 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). Although Evans requested a term of probation conditioned on his entry into a drug rehabilitation program, the district court determined that a prison term was appropriate because of the nature of the crime and Evans' multiple prior felony convictions and probation violations. Having considered the sentence and the crime, we are not convinced that the sentence imposed is so grossly disproportionate to the gravity of the offense and Evans' history of recidivism as to constitute cruel and unusual punishment. Further, Evans' sentence falls within the relevant sentencing parameters, see NRS 200.380(2), and Evans does not allege that the statute is unconstitutional. Evans also does not allege that the district court relied on impalpable or highly suspect evidence. We therefore conclude that the district court did not abuse its discretion, and we

ORDER the judgment of conviction AFFIRMED.

, J.
Hardesty

, J.
Douglas

, J.
Cherry

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