

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TITO BONILLA-ROSADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70489

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of commission of a fraudulent act and possession of a controlled substance. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Appellant Tito Bonilla-Rosado claims the district court abused its discretion at sentencing by denying him an opportunity for a drug diversion program. He asserts that he had no prior felonies at the time of sentencing, he took accountability for his actions and said he was sorry, and he was a user of heroin and needed help.

We review a district court's decision denying a request for a drug treatment program under NRS chapter 458 for an abuse of discretion. *Cassinelli v. State*, 131 Nev. ___, ___, 357 P.3d 349, 356-58 (Ct. App. 2015); *see also* NRS 458.320(2).

Bonilla-Rosado sought civil commitment under NRS chapter 458. When considering this request, the district court noted that Bonilla-Rosado was ordered to attend drug court as a condition of his release pending sentencing and, although he got into the program, he walked away from it. The district court denied Bonilla-Rosado's request, stating

“this special privilege of civil commitment under Chapter 458 is reserved for those who want to come to the program. You didn’t want to.” We conclude the district court did not abuse its discretion by denying Bonilla-Rosado’s request for civil commitment pursuant to NRS chapter 458.

Bonilla-Rosado also claims the sentence imposed constitutes cruel and unusual punishment. Specifically, he asserts it was grossly disproportionate to impose 364 days in jail as a condition of probation for two non-violent felonies.

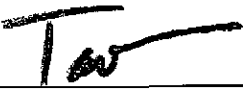
Regardless of its severity, a sentence that is within the statutory limits is not “cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 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 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).

The district court sentenced Bonilla-Rosado to concurrent prison terms of 19-48 months, suspended the sentence and placed him on probation for a term of 60 months. The district court ordered Bonilla-Rosado to serve 364 days in jail, with 123 days of credit, as a term of his probation. The sentence imposed is within the parameters provided by the relevant statutes. *See* NRS 176A.100(c); NRS 193.130(2)(e); NRS 453.336(2)(a); NRS 465.088(1). Bonilla-Rosado does not allege that those statutes are unconstitutional. Moreover, it is within the district court’s discretion to impose flat time as a condition of probation. *Haney v. State*,

124 Nev. 408, 414 n.21, 185 P.3d 350, 354 n.21 (2008). We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Alvin R. Kacin, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk