

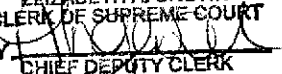
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YUE YING LI, A/K/A IRENE LI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70100

FILED

MAR 22 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Yue Ying Li appeals from a judgment of conviction, entered pursuant to a guilty plea, of drawing and passing a check without sufficient funds in drawee bank with intent to defraud, presumptions of intent to defraud. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

First, Li argues her sentence of 12 to 36 months in prison constitutes cruel and unusual punishment because it is grossly disproportionate to her crime, the district failed to consider whether her sentence should be run consecutive or concurrent to her federal sentence, and she is being imprisoned because she could not pay her debts.

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 sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 205.130(1); NRS 193.130(2)(d), and Li does not allege that those statutes are unconstitutional. Further, Li fails to demonstrate the district court did not consider whether to run the sentence consecutive or concurrent. The district court specifically stated it wanted to punish Li separately from the federal case after determining the crime in the instant case was different than the crime committed in the federal case. Finally, Li fails to demonstrate she is serving her sentence only because she could not pay her debts. As part of the guilty plea agreement, Li agreed to pay restitution within two years of signing the agreement and if she paid the restitution in that time period the case would be dismissed. If she did not pay the restitution within two years or if she committed a new crime, the State would proceed to sentencing and the State would regain the right to argue for any lawful sentence. Li did not pay the restitution and she was arrested and convicted of federal offenses. Therefore, Li is not serving her sentence merely because she could not pay her debts but rather because she violated the terms of her plea agreement. Accordingly, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Second, Li argues her right to a speedy sentencing was violated because she was not sentenced within a reasonable time.<sup>1</sup> Specifically, she argues the State knew or should have known she was in federal custody and should have filed a writ of habeas corpus ad prosequendum. Li failed to raise this claim in the district court; therefore, no relief is warranted absent a demonstration of plain error. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (“In conducting plain error review, we must examine whether there was ‘error,’ whether the error was ‘plain’ or clear, and whether the error affected the defendant’s substantial rights.”).


Even assuming Li is entitled to a speedy sentencing hearing, Li fails to demonstrate error, plain or otherwise. *See Wingo v. Barker*, 407 U.S. 514, 530 (1972) (enunciating factors to consider as “length of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant”). While the length of the delay in this case was long, seven years, the reason for the delay falls on Li. She asked for two years to pay off the restitution listed in the plea agreement. Further, she was in federal prison during the remainder of the time and did not assert her right to a speedy sentencing and does not appear to have informed the State she was incarcerated in federal prison. Contrary to Li’s claim in her brief, Li fails to demonstrate the State knew, or should

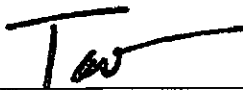
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<sup>1</sup>To the extent Li argues counsel was ineffective for failing to ensure she was sentenced in a timely manner, this claim is not properly raised on direct appeal. *See Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

have known, Li was in federal custody. Further, she fails to demonstrate she was prejudiced by the delay. Accordingly, we

ORDER the judgment of the conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Carolyn Ellsworth, District Judge  
Resch Law, PLLC d/b/a Conviction Solutions  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk