

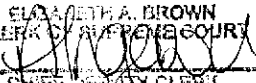
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERALD THEODORE GLENN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72167

FILED

JAN 09 2018

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

ORDER OF AFFIRMANCE


Gerald Theodore Glenn appeals from a judgment of conviction entered pursuant to a guilty plea of driving while under the influence of intoxicating liquor or alcohol resulting in death and driving while under the influence of intoxicating liquor or alcohol resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

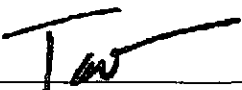
Glenn argues his sentence constitutes cruel and unusual punishment because the district court failed to impose a lesser sentence for the count which only resulted in substantial bodily harm, failed to follow the sentence recommendation contained in the presentence investigation report (PSI), ignored mitigation evidence, and imposed the maximum possible sentence. 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).

Here, the district court heard the arguments of counsel, discussion of the facts of the crime and Glenn's mitigation evidence, and victim impact statements. The district court then noted Glenn's "criminal history is appalling" as it included 14 prior felonies. The district court concluded consecutive terms of 8 to 20 years was the appropriate sentence in this matter, which fell within the parameters of the relevant statutes. See 176.035(1); NRS 484C.430(1). Glenn does not argue the statutes are unconstitutional or his sentence is so disproportionate to his offenses as to shock the conscience. We also note the district court is not required to follow the sentencing recommendation of the Division of Parole and Probation. See *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972) ("A trial court does not abuse its discretion by imposing a sentence in excess of that suggested by the [Division]."). We conclude Glenn's sentence does not constitute cruel and unusual punishment, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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