IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMIEN DEMETRIUS REESE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70877

FILED

DEC 28 2017

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

ORDER OF AFFIRMANCE

Damien Demetrius Reese appeals from a judgment of conviction entered pursuant to a guilty plea of attempted battery resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Michael Villani, Judge; Eighth Judicial District Court, Clark County; Valerie Vega, Senior Judge.[1]

First, Reese argues the State violated the plea agreement by arguing for sentencing under the large habitual criminal statute. We conclude this claim lacks merit. The record demonstrates Reese failed to comply with the terms of his plea agreement. Therefore, under the terms of the plea agreement, the State was permitted to seek sentencing under the habitual criminal statute.

Second, Reese argues the district court abused its discretion by sentencing him pursuant to the large habitual criminal statute because his sentence shocks the conscience. He argues his sentence of 10 to 25 years in

[1]The Honorable Valerie Vega, Senior Judge, presided at sentencing.

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prison is more than 6 times the maximum he was facing for a category D felony.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere 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 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 statute, *see* NRS 207.010(1)(b), and Reese does not allege that statute is unconstitutional. Reese also does not allege the district court relied on impalpable or highly suspect evidence. We have considered the sentence and the crime and we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual

punishment and the district court did not abuse its discretion when imposing sentence. Therefore, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Hon. Valerie J. Vega, Senior Judge
Roy L. Nelson, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk