IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW PAUL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71212

ORDER OF AFFIRMANCE

Matthew Paul Williams appeals from a judgment of conviction entered pursuant to a jury verdict of eluding a police officer in a manner posing a danger to persons or property. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

First, Williams claims the district court erred by denying his pretrial petition for a writ of habeas corpus because the State failed to provide reasonable notice of the time and place of the grand jury proceeding. However, the record demonstrates Williams received timely notice of the grand jury proceeding and the notice instructed him to contact the district attorney if he wished to testify before the grand jury. Williams did not inform the district attorney he wished to testify before the grand jury, so the district attorney was not required to forward any additional information. *See* NRS 172.241(2)(b); *Davis v. Eighth Judicial Dist. Court*, 129 Nev. 116, 120, 294 P.3d 415, 418 (2013). Based on this record, we conclude the district court did not err by denying Williams' pretrial habeas petition.

Second, Williams claims insufficient evidence supports his conviction because the State failed to prove he heard the police siren and

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drove in a manner posing a danger to persons or property. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The jury heard testimony that Trooper Duncan Dauber activated his emergency lights and initiated a traffic stop after determining Williams' car was traveling above the speed limit. Trooper Dauber was wearing his highway patrol uniform and driving a blue Harley-Davidson motorcycle with highway patrol markings. The emergency lights consisted of four red and blue lights that illuminated toward the front and six red and blue lights that illuminated toward the back.

Trooper Dauber kept the motorcycle idling and the emergency lights activated when he got off the motorcycle to approach the passenger side of Williams' car. He ran Williams' California identification card through the dispatch center and learned there was a warrant for Williams' arrest. And he drew his handgun, pointed it at Williams, and ordered Williams to put his hands up.

Williams looked down the road, looked at the trooper in the rear-view mirror, put his car into drive, and drove away on a road that had other traffic. Trooper Dauber was able to reholster his handgun, store his citation gear, plug into the motorcycle's radio, put his gloves on, turn on the siren, and start pursuing Williams within a matter of seconds. He eventually lost sight of Williams' car and slowed down to 85 miles per hour to see if Williams had melded in with the traffic.

Trooper Dauber found Williams' car abandoned in the westbound fast lane of the Mount Rose Highway. The car had extensive damage to its right side and its airbags had deployed—these conditions did not exist during the initial traffic stop. There were scuff marks where the car had hit a concrete barrier and been deflected back through an intersection, and there were yaw marks where the car had travelled through the intersection. Trooper Dauber set up traffic control to prevent people from running into the back end of the car, and he and another trooper later pushed the car out of the way to open the lane to traffic.

We conclude a rational juror could reasonably infer from this testimony Williams eluded a police officer in a readily identifiable patrol vehicle with flashing red lights and a loud siren, and he did so in a manner that posed a danger to other persons and property. *See* NRS 484B.550(1), (2), (3)(b); *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) ("[C]ircumstantial evidence alone may support a conviction."). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Third, Williams claims the district court erred by denying his motion to strike the State's notice of intent to seek habitual criminal adjudication. Williams argues the habitual-criminal-adjudication notice was filed after he refused to accept the State's plea offers and it violated the due process prohibition against vindictive prosecution. Williams asserts the State's first plea offer allowed him to plead without any risk of a habitual criminal enhancement but the State's second plea offer included a habitual criminal enhancement.

The district court found there was no "retaliatory purpose based upon the timing of this and the notice and the documents presented in that regard." The record supports the district court's finding, and we conclude it did not abuse its discretion by denying Williams' motion to strike. *See generally Schmidt v. State*, 94 Nev. 665, 666, 584 P.2d 695, 696 (1978) ("[W]e construe the prosecutor's conduct as merely presenting the appellant with the unpleasant alternatives of foregoing trial or facing charges on which he was plainly subject to prosecution. Such a mode of behavior cannot be viewed as violating the due process clause of the fourteenth amendment.").

Fourth, Williams claims his habitual criminal adjudication and 5- to 20-year prison sentence constitute cruel and unusual punishment because he has long suffered from drug addiction, he has predominately committed theft or property offenses, he was only sent to prison one time and paroled one time, and the instant offense did not justify a habitual criminal adjudication.

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).

Williams' sentence falls within the parameters of NRS 207.010(1)(a), and he does not allege this statute is unconstitutional. We note the record demonstrates Williams has at least two prior felony convictions and evidence of those prior convictions was presented to the district court at sentencing. And we conclude Williams' sentence is not grossly disproportionate to his crime and history of recidivism and it does not constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion); *see generally Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions.").

Having determined Williams is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Chief Judge, Second Judicial District Court
Tanner Law & Strategy Group, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk