IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAWRENCE EDWARD THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76507-COA

ORDER OF AFFIRMANCE

Lawrence Edward Thomas appeals from a judgment of conviction entered pursuant to a guilty plea of attempted sexual assault on a minor under sixteen years of age. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

First, Thomas claims the district court abused its discretion by sentencing him to a prison term of 96 to 240 months. He argues this sentence exceeded the Division of Parole and Probation's recommendation and was contrary to substantial mitigating factors. And he asserts the district court did not articulate findings in support of the sentence it imposed.[1]

[1]Thomas also claims the Nevada Supreme Court decisions that state the appellate courts will refrain "from interfering with the sentence imposed so long as the record does not demonstrate prejudice resulting from consideration of information founded on facts supported only by impalpable or highly suspect evidence" and the Nevada Supreme Court decision in *Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998), which states the district court is not required to state its reasons for imposing a sentence should be overruled. However, even assuming we could overrule Nevada Supreme Court precedent, we conclude Thomas has not demonstrated that such action is warranted.

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"A district court has wide discretion in imposing a prison term and this court will not disturb the sentence absent a showing of abuse of discretion." *Tanksley v. State*, 113 Nev. 844, 848, 944 P.2d 240, 242 (1997). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks omitted).

Here, the sentence imposed falls within the parameters provided by the relevant statutes. *See* NRS 193.330(1)(a)(1); NRS 200.366(3). The district court was not required to follow the Division of Parole and Probation's sentencing recommendation or to state its reasons for imposing a sentence. *See Campbell*, 114 Nev. at 414, 957 P.2d at 1143; *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). And the record demonstrates the district court considered the presentence investigation report, counsels' arguments, Thomas' allocution, and a victim's letter and her guardian's statement. Therefore, we conclude Thomas has not demonstrated that the district court abused its discretion at sentencing.

Second, Thomas claims the district court abused its discretion at sentencing and evidenced bias when it imposed a sentence based on information or accusations supported by impalpable or highly suspect evidence.

"[The] court is privileged to consider facts and circumstances which clearly would not be admissible at trial." *Silks v. State*, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976). However, we "will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). "[The] remarks of a judge made in the context of a court proceeding are not considered indicative

of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Here, the record does not suggest the district court's sentencing decision was based on impalpable or highly suspect evidence, nor does it support the conclusion that the district court was biased against Thomas or closed its mind to the presentation of all evidence. Therefore, we conclude Thomas has not demonstrated the district court abused its discretion at sentencing.

Third, Thomas claims his sentence presents one of those exceedingly rare and extreme cases where a sentence that falls within the statutory limits constitutes cruel and unusual punishment because it is grossly disproportionate to the offense.

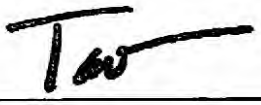
Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 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 sentence imposed falls within the parameters provided by the relevant statutes. *See* NRS 193.330(1)(a)(1); NRS 200.366(3). Thomas does not allege that those statutes are unconstitutional. And we conclude that the sentence imposed is not grossly

disproportionate to Thomas' crime and it does not constitute cruel and unusual punishment.

Having concluded Thomas is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk