

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78590-COA

**FILED**

JAN 14 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

James Howard Hayes, Jr., appeals from a judgment of conviction entered pursuant to an *Alford*<sup>1</sup> plea of attempted grand larceny. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Hayes argues his sentence is cruel and unusual because his sentence is disproportionate to his crime. 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).

Hayes’ sentence of 60 to 174 months in prison is within the parameters provided by the relevant statute, see NRS 207.010(1)(a), and


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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

Hayes does not allege that statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and Hayes' history of recidivism. See *Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion) ("In weighing the gravity of [the defendant's] offense, we must place on the scales not only his current felony, but also his long history of felony recidivism."). Therefore, Hayes' sentence does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. William D. Kephart, District Judge  
Sanft Law, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk