

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS MICHAEL GOKEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77231-COA

FILED

JAN 30 2020

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

ORDER OF AFFIRMANCE

Nicholas Michael Gokey appeals from a judgment of conviction entered pursuant to a guilty plea of unlawful transport of a controlled substance. Eleventh Judicial District Court, Mineral County; Jim C. Shirley, Judge.

Gokey claims his prison term of 19 to 48 months constitutes cruel and unusual punishment. Gokey asserts that because of the advances he made while his case was pending, including completion of the first phase of addiction treatment and recovery at Step 1, and because all of his prior history was substance and/or alcohol related, he should have received probation and continued drug treatment.


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).

The sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 453.321(2)(a), and Gokey does not allege that those statutes are unconstitutional. Further, it is within the district court's discretion to grant probation. *See* NRS 176A.100(1)(c). We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
The Law Office of Jacob N. Sommer
Attorney General/Carson City
Mineral County District Attorney
Mineral County Clerk