

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS CHACON GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78692-COA

FILED

JAN 30 2020

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

ORDER OF AFFIRMANCE

Marcus Chacon Gonzalez appeals from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit robbery and battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Gonzalez claims his sentence constitutes cruel and unusual punishment because the sentence imposed did not accurately reflect the mitigating factors present in his case. He argues that had the court given full consideration to his young age, lack of criminal history, genuine remorse, and extensive family support, then the court would not have imposed such a high sentence.

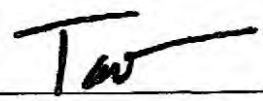
Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 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 district court imposed a prison term of one to four years for the conspiracy conviction and a consecutive prison term of four to ten years for the battery conviction. The sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 199.480(1)(b); NRS 200.380(2); NRS 200.481(2)(e)(2), and Gonzalez does not allege that those statutes are unconstitutional. The record demonstrates the district court considered Gonzalez' mitigating factors and determined a prison term of this length was appropriate considering Gonzalez was the shooter and he continued to possess firearms after this event. 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. Eric Johnson, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk