

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS SALGADO-MORENO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78951-COA

**FILED**

APR 27 2020

ELIZABETH A. BRADY  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Luis Salgado-Moreno appeals from a judgment of conviction, entered pursuant to a nolo contendere plea, of reckless driving causing substantial bodily harm. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Salgado-Moreno claims the district court abused its discretion by denying him the opportunity at probation. Salgado-Moreno argues that, because the district court proclaimed this case very likely constituted a case of driving under the influence, the district court relied on impalpable and highly suspect evidence and intended to punish him for an uncharged crime when the court decided not to place him on probation. Salgado-Moreno also claims his prison sentence of 24 to 60 months constitutes cruel and unusual punishment.

“A district court is vested with wide discretion regarding sentencing,” and “[f]ew limitations are imposed on a judge’s right to consider evidence in imposing a sentence.” *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). “Possession of the fullest information possible concerning a defendant’s life and characteristics is essential to the sentencing judge’s task of determining the type and extent of punishment.”

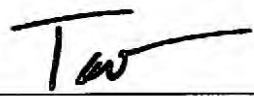
*Id.* This court will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). 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, it was within the district court’s discretion to grant probation. *See* NRS 176A.100(1)(c). The prison sentence imposed in this case is within the parameters provided by the relevant statute, *see* NRS 484B.653(9), and Salgado-Moreno does not allege that the statute is unconstitutional. Although Salgado-Moreno alleges the district court relied on impalpable or highly suspect evidence, he has failed to meet his burden to demonstrate that the sentence imposed was based *solely* on impalpable and highly suspect evidence because he did not provide this court with the presentence investigation report for review on appeal. Considering the crime and Salgado-Moreno’s criminal history, we conclude the district court did not abuse its discretion by declining to suspend the sentence and place Salgado-Moreno on probation. We further 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. Alvin R. Kacin, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk