

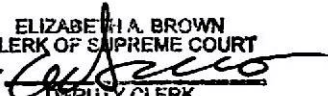
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEX MATTHEW BANN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80303-COA

FILED

JAN 08 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Alex Matthew Bann appeals from a judgment of conviction, pursuant to an *Alford*<sup>1</sup> plea, of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Bann contends the district court erred by denying his motion to withdraw his guilty plea without first holding an evidentiary hearing. Bann argues the district court continued the hearing on the motion several times and then implicitly denied the motion by sentencing Bann without first ruling on it. Bann's contentions are not supported by the record before this court. First, the continuances were due to Bann. He failed to appear at the hearing the district court set on the motion, and the district court took it off calendar. When Bann was brought back before the court, the district court asked about the outstanding motion and Bann asked only for a status check because the parties were attempting to reach a global negotiation to include Bann's new charges. Second, Bann implicitly withdrew his motion. Nothing in the record before this court suggests Bann attempted to renew

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

or resubmit his motion. Rather, at the status check that Bann requested, he noted the parties' failure to reach a global agreement and specifically asked for the case to be set for sentencing. And Bann did not raise the motion at his sentencing hearing. By failing to renew the issue over the course of nearly three months and multiple hearings, including when the district court specifically asked Bann about the motion, Bann implicitly withdrew his motion, and the district court did not rule on it. Therefore, we conclude Bann is not entitled to relief on this claim.

Bann also argues his sentence under the habitual criminal statute amounts to cruel and unusual punishment.<sup>2</sup> 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 of 5 to 20 years in prison is within the parameters provided by the relevant statute, see NRS 207.010(1)(a), and Bann does not allege that the statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and Bann's history of recidivism involving firearms, and it does not constitute cruel and unusual

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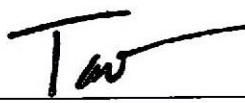
<sup>2</sup>Bann also raises a new argument in his reply brief, asserting the State abused its discretion in seeking habitual criminal punishment. This new argument is improper, and we decline to consider it. See NRAP 28(c).

punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion).

Finally, Bann argues that the cumulative effect of the errors in this case warrants reversal. As Bann identifies no errors, we conclude there are no errors to cumulate. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District  
Eighth Judicial District, Dept. 19  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk