

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL WESLEY WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81922-COA

FILED

JUN 28 2021

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

ORDER OF AFFIRMANCE

Michael Wesley Wilson appeals from a judgment of conviction, entered pursuant to a plea of guilty, of second-degree murder with the use of a deadly weapon. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

First, Wilson claims the district court abused its discretion by relying on impalpable or highly suspect evidence when imposing his sentence. "A district court is vested with wide discretion regarding sentencing," but we will reverse a sentence "if it is supported *solely* by impalpable and highly suspect evidence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). Wilson argues the district court improperly relied on information that Wilson killed animals owned by a family he lived with. Wilson also argues the district court improperly focused on the lack of evidence in the record of Wilson's truancy or of the Division of Child and Family Services' involvement in his life. However, the record reflects that

the district court also considered a mitigation report prepared on Wilson's behalf, mitigating circumstances presented by Wilson at sentencing and a character letter provided in support of Wilson. Therefore, Wilson has failed to meet his burden to demonstrate that the sentence imposed was based *solely* on impalpable and highly suspect evidence.

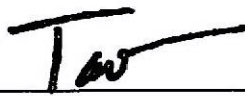
Second, Wilson claims his sentences amount to cruel and unusual punishment in light of the mitigating evidence presented to the district court. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional 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).

Wilson's consecutive sentences of 10 years to life in prison for the second degree murder conviction and 96 to 240 months in prison for the deadly weapon enhancement are within the parameters provided by the relevant statutes, *see* NRS 193.165(1); NRS 200.030(5)(a), and Wilson does not allege that those statutes are unconstitutional. Based on these facts,

and upon consideration of the sentence and the crime, we conclude the sentence imposed is not grossly disproportionate to the crime, it does not constitute cruel and unusual punishment, and the district court did not abuse its discretion when imposing Wilson's sentences. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
Boskovich Law Group, PLLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk