

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MORENO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82367-COA

FILED

OCT 13 2021

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

ORDER OF AFFIRMANCE

David Moreno, Jr., appeals from a judgment of conviction, entered pursuant to a guilty plea, of two counts of attempted lewdness with a child under 14 years of age. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

First, Moreno argues his sentences constitute cruel and unusual punishment. 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).

Moreno was sentenced to consecutive terms of 28 to 72 months in prison. The sentences imposed are within the parameters provided by the relevant statutes, see NRS 193.330(1)(a)(1); NRS 201.230(2), and

Moreno does not allege that those statutes are unconstitutional. Having considered the sentences and the crimes, we conclude the sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment; therefore, Moreno is not entitled to relief based upon this claim.

Second, Moreno argues that at sentencing the district court “abused its discretion by allowing victim impact speakers to make disparaging comments towards him in excess of a victim impact statement or otherwise act without decorum.” He also asserts that the “victim was arguably issuing a veiled threat.” Both victim-impact speakers read statements that described Moreno as a “monster,” with the victim specifically stating that Moreno is “a sick monster that deserves everything bad coming his way.”

Pursuant to NRS 176.015(3)(b), a victim of a crime may “[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.” Although “[t]he statute is broad in terms of what a victim can express,” threats are not appropriate. *Dieudonne v. State*, 127 Nev. 1, 9, 10, 245 P.3d 1202, 1208 (2011). Here, the district court did not clearly abuse its discretion in a noncapital case by allowing the speakers to express their views regarding Moreno. Moreover, the victim’s comment as to what she believed Moreno deserves did not communicate any intent on her part to inflict harm or loss so as to rise to the level of a threat. *See Threat, Black’s Law Dictionary* (11th ed. 2019) (“A communicated intent to inflict harm or loss on another or on another’s property, esp. one that might diminish a person’s freedom to act voluntarily or with lawful consent; a declaration, express or implied, of an intent to inflict loss or pain on another . . .”).

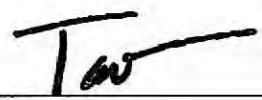
Further, based on our review of the record, there is no indication to suggest that, during the victim impact testimony, the district court failed to maintain the appropriate decorum in the courtroom.

Finally, even if the challenged comments exceeded the permissible boundaries of NRS 176.015(3), any error was harmless. See *Dieudonne*, 127 Nev. at 9 n.3, 245 P.3d at 1207 n.3. There is no indication in the record to suggest that the sentencing judge was influenced by the challenged comments when imposing Moreno's sentence. After listening to the victim-impact testimony, the district court imposed a sentence significantly shorter than the maximum sentence sought by the State. Accordingly, we conclude Moreno is not entitled to relief based upon this claim.

For the foregoing reasons, we conclude Moreno is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk