IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES FREDRICK WALKLIN, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82815-COA

FILED

JAN 05 2022

ORDER OF AFFIRMANCE

Charles Fredrick Walklin, II, appeals from a judgment of conviction entered pursuant to a jury verdict of attempted murder with the use of a deadly weapon, battery with the intent to kill with the use of a deadly weapon, and battery constituting domestic violence with the use of a deadly weapon causing substantial bodily harm. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

First, Walklin argues that the district court erred by admitting into evidence a bottle of Fireball whiskey that had been tampered with by law enforcement. However, the record demonstrates that Walklin introduced the bottle of Fireball whiskey at trial and moved for the district court to admit it into evidence. The district court subsequently granted Walklin's request to admit the whiskey bottle into evidence. Under these circumstances, any error stemming from the admission of the whiskey bottle was invited by Walklin. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors

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which he himself induced or provoked the court or the opposite party to commit." (quoting 5 Am.Jur2d Appeal and Error § 713 (1962), p. 159-60)). Accordingly, we conclude Walklin is not entitled to relief based upon this claim.

Second, Walklin argues that the district court erred by denying his motion to dismiss the battery charges. In his motion, Walklin contended the State improperly charged him with committing attempted murder and battery offenses for actions that arose out of the same incident.[1] Walklin contended that the charges were duplicative because he could not commit both specific-intent and general-intent crimes during one incident.

This court reviews a district court's denial of a motion to dismiss for an abuse of discretion. *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008). "A single act can violate more than one criminal statute," and "[i]n general, the answer to the single act/multiple punishment question depends on the statutes violated." *Jackson v. State*, 128 Nev. 598, 601, 291 P.3d 1274, 1276 (2012). The Nevada Supreme Court has already concluded that the Legislature authorized "conviction of and punishment for attempted murder in tandem with . . . battery," *id.* at 607, 291 P.3d at 1279, and that multiple punishments for those offenses do not violate double jeopardy principles because the statutes for attempted murder and battery "do not

[1]We note that the record before this court does not contain a copy of Walklin's written motion to dismiss as required by NRAP 30(b)(3). The record merely contains a transcript of the hearing where the parties and the district court discussed the motion. We remind Walklin it is his burden as the appellant to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009).

proscribe the same offense" and, therefore, "the presumption against multiple punishments for the same offence does not arise," *id.* at 607, 291 P.3d at 1280 (internal quotation marks omitted). Thus, Walklin's dual charges were not improperly duplicative, and the State did not improperly charge Walklin with attempted murder and battery offenses when the charges arose out of the same incident. Therefore, we conclude the district court did not abuse its discretion by denying the motion to dismiss.

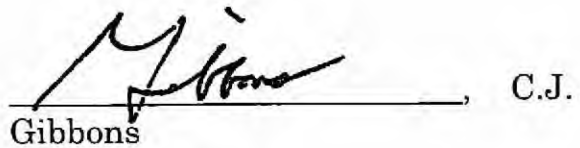
Third, Walklin argues that his sentence constitutes cruel and unusual punishment when weighed against his nominal criminal history. Walklin contends he only had two prior misdemeanor convictions, the crimes in this matter arose out of one incident, and therefore, he should have received a shorter sentence.

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 sentenced Walklin to serve terms totaling 240 to 600 months in prison, which is within the parameters provided by the relevant statutes. *See* NRS 176.035(1); NRS 193.165(1); NRS

193.330(1)(a)(1); NRS 200.030(4); NRS 200.400(3); NRS 200.485(3). And Walklin does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crimes 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. John Schlegelmilch, District Judge
Walther Law Offices, PLLC
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk