

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRETT ALAN LINDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

BRETT ALAN LINDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83162-COA

FILED

APR 20 2022

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

No. 83163-COA

ORDER OF AFFIRMANCE

Brett Alan Linder appeals from his judgments of conviction. In Docket No. 83162, Linder was convicted, pursuant to a guilty plea, of grand larceny of a firearm. In Docket No. 83163, Linder was convicted, pursuant to a guilty plea, of discharging a firearm at or into a structure, vehicle, aircraft, or watercraft. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

First, Linder claims the sentencing judge exhibited bias and should have recused himself prior to sentencing. “[A] judge is presumed to be impartial.” *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). “[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show the judge has closed his or her mind to the presentation of all the evidence.” *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Linder argues the judge exhibited bias by referring to Linder as a “psychopath.” The judge determined that, given Linder’s past crimes and inability to stay out of trouble after completing regimental discipline and probationary terms, Linder was unable to be reformed and was thus a psychopath. Specifically, the judge found that Linder’s past crimes were either violent in nature, involved the use of a firearm, or involved the stealing of a firearm. These conclusions were based on the facts and arguments made to the district court during the sentencing hearing, and they did not demonstrate the judge closed his mind to the presentation of all the evidence. Therefore, we conclude Linder has failed to demonstrate the judge was biased against him and that recusal was warranted.

Next, Linder argues the consecutive sentences imposed by the district court constitute cruel and unusual punishment because the sentences are disproportionate to the crimes. Specifically, he claims the district court ignored the recommendations made by the State and the Division of Parole and Probation (Division) to impose concurrent terms and ignored Linder’s request for probation.

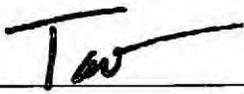
The district court has wide discretion in its sentencing decision, *see Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), including in the granting of probation, *see* NRS 176A.100(1)(c). Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment 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).

Linder was sentenced to two consecutive terms of 48 to 120 months in prison. The sentences imposed are within the parameters provided by the relevant statutes, *see* NRS 202.285(1)(b); NRS 205.226(2), and Linder does not allege that those statutes are unconstitutional. Further, Linder does not argue how the sentences were disproportionate to the crime. Further, the district court was not required to follow the recommendations of the parties or the Division. *See, e.g., Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). Therefore, Linder has failed to demonstrate the sentences constituted cruel and unusual punishment. Accordingly, we

ORDER the judgments of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk