IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FOSTER DARRYLE TILLMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83067-COA



*ORDER OF AFFIRMANCE*

Foster Darryle Tillmon appeals from a judgment of conviction, entered pursuant to a guilty plea, of battery with the use of a deadly weapon and discharge of a firearm from or within a structure or vehicle. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Tillmon argues that his sentences amount to 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).

Tillmon's concurrent sentences of 2 to 10 years in prison are within the parameters provided by the relevant statutes, *see* NRS 200.481(2)(e)(1); NRS 202.287(1)(b), and Tillmon does not allege that those statutes are unconstitutional. We therefore conclude the sentences imposed

are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment.

Tillmon also argues the district court abused its discretion at sentencing. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

First, Tillmon claims the district court failed to consider mitigating evidence and lacked enough information to impose his sentences. The district court considered Tillmon's criminal history; the arguments of the parties, including discussion of Tillmon's substance abuse and mental health issues; and Tillmon's allocution prior to imposing Tillmon's sentence. Tillmon fails to allege what additional information the court should have considered before imposing his sentences. Therefore, we conclude that Tillmon is not entitled to relief based on this claim.

Second, Tillmon claims that the district court relied on impalpable and highly suspect evidence and intended to punish Tillmon for acts unrelated to the crimes for which he pleaded guilty. In support, he points to the district court's remark that an argument could be made for attempted murder in this case and the district court's consideration of statements made at sentencing by Tillmon's ex-girlfriend related to uncharged acts of domestic violence.

"Few limitations are imposed on a judge's right to consider evidence in imposing a sentence" and "[p]ossession of the fullest information

possible concerning a defendant's life and characteristics is essential to the sentencing judge's task of determining the type and extent of punishment." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). The district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant." *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); *see also* NRS 176.015(6). A district court may consider uncharged crimes during sentencing but "must refrain from punishing a defendant for prior uncharged crimes." *Denson*, 112 Nev. at 494, 915 P.2d at 287. We "will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Id.* at 492, 915 P.2d at 286.

Tillmon fails to argue how the statements made at sentencing were inaccurate and thus fails to demonstrate that they were impalpable or highly suspect evidence. In addition, as discussed above, the district court considered other information before imposing Tillmon's sentence. Finally, Tillmon fails to demonstrate the district court punished him for uncharged acts. We therefore conclude the district court did not abuse its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk