

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ALLEN MURRAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85064-COA

FILED

MAR 14 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Allen Murray appeals from a judgment of conviction, entered pursuant to a guilty plea, of assault with the use of a deadly weapon. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Murray argues the district court erred by filing the judgment of conviction late. NRAP 4(b)(5)(A) states that the district court shall enter a written judgment of conviction within 14 days of sentencing. Murray was sentenced on May 31, 2022, and the judgment of conviction was filed on June 20, 2022. While the district court should have filed the judgment of conviction within 14 days, Murray fails to demonstrate his substantial rights were affected. *See* NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). Therefore, we conclude Murray is not entitled to relief on this claim.

Murray also argues the district court abused its discretion at sentencing and the prison sentence of 28 to 72 months in prison constituted cruel and unusual punishment. Murray claims the district court failed to take his individual circumstances into consideration and should have placed him on probation and in a treatment program.

The granting of probation is discretionary. See NRS 176A.100(1)(c); NRS 176A.240(1); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). 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). 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 sentence imposed is within the parameters provided by the relevant statute, see NRS 200.471(2)(b), and Murray does not allege that the statute is unconstitutional. Murray also does not allege the district court relied on impalpable or highly suspect evidence. Contrary to Murray’s assertion, the district court stated at sentencing that it considered Murray’s individual circumstances when imposing the prison term rather than placing him on probation. The district court also stated it had considered and appreciated the letters and other evidence presented by the defense.

Nonetheless, the district court concluded that the severity of the crime outweighed that evidence. We have considered the sentence and the crime, and 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 the prison sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michael Montero, District Judge  
Humboldt County Public Defender  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk