

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK TRINIDAD CUELLAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84470-COA

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mark Trinidad Cuellar appeals from a judgment of conviction, entered pursuant to guilty plea, of grand larceny. First Judicial District Court, Carson City; James E. Wilson, Judge.

Cuellar argues the district court abused its discretion by sentencing him to a prison term rather than allowing him to participate in drug court. Cuellar also suggests his sentence violates the Eighth Amendment's prohibition against cruel and unusual punishments.

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). 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

23-12574

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).

Cuellar’s sentence of 24 to 60 months in prison is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(c); NRS 205.222(2)(b), and Cuellar does not allege that those statutes are unconstitutional. Cuellar also does not allege the district court relied on impalpable or highly suspect 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 sentence. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. James E. Wilson, District Judge
Law Office of Daniel J. Spence
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk