

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICKOLAS ANTHONY VONALST,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85235-COA

**FILED**

JUL 26 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE AND REMANDING TO CORRECT  
JUDGMENT OF CONVICTION*

Nickolas Anthony Vonalst appeals from a judgment of conviction, entered pursuant to a no contest plea, of attempted robbery and attempted assault with the use of a deadly weapon. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Vonalst argues that the district court's imposition of consecutive maximum sentences without meaningfully considering his age and criminal history amounts 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).

Vonalst's sentences are within the parameters provided by the relevant statutes, *see* NRS 193.153(1)(a)(2) (formerly NRS 193.330); NRS 200.380(2); NRS 200.471(2)(b), and Vonalst does not allege that those statutes are unconstitutional. In addition, it was within the district court's discretion to order that Vonalst's sentences be served consecutively. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015). We conclude the sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment.

A review of the record on appeal reveals that the judgment of conviction contains a clerical error. It incorrectly states that Vonalst pleaded no contest to, and was convicted of, attempted robbery "with use of a deadly weapon." The operative charging document contained in the record does not allege that the attempted robbery was committed with a deadly weapon, and the district court did not impose a mandatory deadly weapon enhancement sentence. *See* NRS 193.165. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the district court, upon remand, to enter a corrected judgment of conviction accurately reflecting Vonalst's offense. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND to the district court to correct the judgment of conviction.<sup>1</sup>

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

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

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

cc: Hon. Robert W. Lane, District Judge  
Jason Earnest Law, LLC  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

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<sup>1</sup>Vonalst also argues that the district court erred with regard to an “unenforceable” term in Vonalst’s plea agreement, but that issue has been withdrawn as moot by stipulation of the parties.