

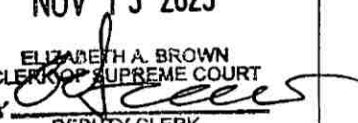
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID BOOKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86052-COA

FILED

NOV 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Booker appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Michael A. Cherry, Senior Judge.

Booker argues his sentence amounts to cruel and unusual punishment because it exceeded the sentence sought by the State and the sentencing court focused on his criminal history and not the facts of the offense. 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 district court sentenced Booker to 12 to 36 months in prison. The sentence imposed is within the parameters provided by the

relevant statutes, *see* NRS 193.130(2)(d); NRS 193.153(1)(a)(4); NRS 200.481(2)(b), and Booker does not allege that those statutes are unconstitutional. Further, the district court is not required to follow the State's sentencing recommendation. *See, e.g., Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. Michael A. Cherry, Senior Judge
Waldo Law, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk