

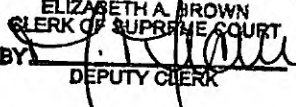
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PERRY BRIAN OSHIRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86669-COA

FILED

NOV 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Perry Brian Oshiro appeals from a judgment of conviction, entered pursuant to a guilty plea, of burglary of a business. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

Oshiro argues that his sentence constitutes cruel and unusual punishment. He claims that the crime was not serious, and he was a great candidate for probation. 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).

Oshiro’s sentence of 12 to 60 months is within the parameters provided by the relevant statutes, see NRS 193.130(2)(c); NRS 205.060(2)(c), and Oshiro does not allege that the statutes are unconstitutional. The

district court considered Oshiro's recent failure on probation as well as Oshiro's criminal history when denying Oshiro's request for probation. See NRS 176A.100(1)(c) (stating that the granting of probation is discretionary); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . ."). We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Therefore, Oshiro fails to demonstrate he is entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Bitia Yeager, District Judge
Law Office of Rachael E. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk