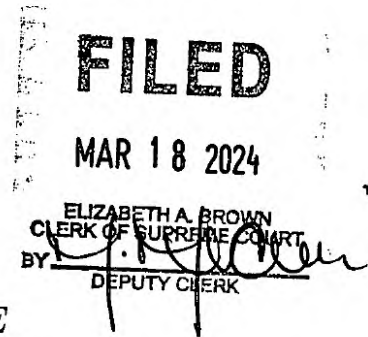


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN SCOTT HANES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86269-COA



ORDER OF AFFIRMANCE

Alan Scott Hanes appeals from a judgment of conviction, entered pursuant to a guilty plea, of burglary while gaining possession of a firearm or deadly weapon and grand larceny of a firearm. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Hanes argues that his sentence amounts to cruel and unusual punishment because it is unreasonable and disproportionate to the offenses. 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 imposed a 72-to 180-month prison sentence for the burglary count and a consecutive 48-to-120-month prison sentence for the larceny count. The sentences imposed are within the parameters

provided by the relevant statutes, *see* NRS 176.035(1); NRS 205.060(5); NRS 205.226(2), and Hanes does not allege that those statutes are unconstitutional. We conclude the sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment. Thus, Hanes fails to demonstrate he is entitled to relief.

Hanes also argues the district court abused its discretion by relying on impalpable or highly suspect evidence at sentencing. Hanes contends there was no evidence to support the State's argument that he was "playing games with law enforcement." Hanes also contends the State improperly alluded to the fact that Hanes was playing games with the district court because Hanes withdrew from a prior plea deal.

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).

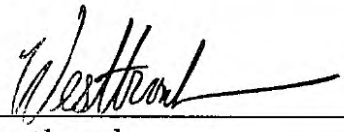
Hanes did not object below to the State's argument regarding Hanes allegedly playing games with law enforcement, and he does not argue on appeal that it constitutes plain error. We thus conclude he has forfeited this claim and we decline to review it on appeal. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error). With regard to the State's comments about the plea deal,

Hanes's counsel explained to the court that Hanes was acting on counsel's advice and asked the court not to hold it against Hanes. The court explained that it would not. Based on this, Hanes fails to demonstrate the court relied on palpable or highly suspect evidence. Therefore, we conclude the district court did not abuse its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Ristenpart Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹Hanes also argues the district court "relied upon its own incorrect argument" regarding when Hanes committed the instant offense in relation to his prior release from prison and that the district court failed to properly advise Hanes during his arraignment about the maximum possible sentences he faced. These claims were raised for the first time in his reply brief, and we decline to consider them. See *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014).