IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN JOSE OJEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86473-COA

FILED

APR 22 2024

ORDER OF AFFIRMANCE

Brian Jose Ojeda appeals from a judgment of conviction, entered pursuant to a guilty plea, of first-degree arson. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Ojeda argues the district court improperly relied on impalpable or highly suspect evidence at sentencing. 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).

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Ojeda claims that the district court improperly relied on facts contained in the presentence investigation report (PSI) and the State's argument during sentencing that the fire was set with the intent to kill. Ojeda did not object below to the facts contained in the PSI or the State's argument, and he does not argue plain error on appeal. 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).

Ojeda also claims that the district court's statements made at the end of the hearing that addiction and trauma are not the cause of violence demonstrate that the court considered impalpable and highly suspect evidence. Ojeda alleges that the court's incorrect assumption regarding the cause of violence is uninformed and at odds with the substance abuse evaluation conducted on Ojeda. We are not persuaded that a district court's remarks about the cause of violence, which are allegedly at odds with a substance abuse evaluation, demonstrate that the district court relied on impalpable or highly suspect evidence.[1]

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[1]We note that Ojeda did not provide this court with a copy of his substance abuse evaluation for our review on appeal. Accordingly, we presume the evaluation supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d, 131, 135 (2007); *see also Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980)

Further, the record reflects that the district court read the substance abuse evaluation, considered Ojeda's criminal history, and listened to the arguments of the parties and Ojeda's allocution before imposing Ojeda's sentence. In light of these circumstances, Ojeda fails to demonstrate the court relied solely on evidence alleged to be impalpable or highly suspect when imposing his sentence. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (providing this court will reverse a sentence "if it is supported *solely* by impalpable and highly suspect evidence"). Therefore, we conclude Ojeda is not entitled to relief based on this claim.

Ojeda also argues his sentence amounts to cruel and unusual punishment because the sentence was so disproportionate to the offense and mitigating factors that it shocks the conscience. 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

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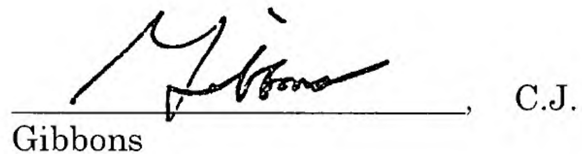
("The burden to make a proper appellate record rests on appellant."); *accord* NRAP 30(b)(3); NRAP 30(d).

proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Ojeda's sentence of 60-to-144-months in prison is within the parameters provided by the relevant statute, *see* NRS 205.010, and Ojeda does not allege that this statute is unconstitutional. 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 at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_______________________, C.J.
Gibbons

_______________________, J.
Bulla

_______________________, J.
Westbrook

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