IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZACKERY SHAWN MICHAEL POTTEIGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89743-COA

ORDER OF AFFIRMANCE

Zackery Shawn Michael Potteiger appeals from a judgment of conviction, entered pursuant to an *Alford*[1] plea, of lewdness with a child under fourteen. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Potteiger raises a facial challenge to the mandatory sentence provided in NRS 201.230(2) as cruel and/or unusual punishment under the United States and Nevada Constitutions. *See* U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. He contends his sentence exceeds what is necessary to achieve the legitimate goals of punishment.

The legislature is empowered, within constitutional limits, to define crimes and fix punishments, and courts should not "encroach upon that domain lightly." *Schmidt v. State*, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978). Consistent with this separation of powers, the Nevada Supreme Court has held that, regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

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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).

Potteiger's sentence of life in prison with the possibility of parole after ten years, falls within the parameters provided by NRS 201.230(2), and the sentence is not disproportionate to the gravity of the offense as to shock the conscience. *See Alfaro v. State*, 139 Nev. 216, 230, 534 P.3d 138, 152 (2023) (concluding multiple, consecutive life sentences for sexual assault of a child and lewdness with a child were not unconstitutionally disproportionate to the offenses); *see also Adaway v. State*, 902 So. 2d 746, 747-53 (Fla. 2005) (holding sentence of life without parole for sexual battery of a child under 12 years of age did not constitute cruel or unusual punishment). Further, Potteiger fails to demonstrate NRS 201.230 is unconstitutional. *Mariscal-Ochoa v. State*, 140 Nev., Adv. Op. 42, 550 P.3d 813, 823 (2025) (holding that statutes are presumed to be valid and the burden to demonstrate a statute is unconstitutional rests with the challenger). The legislature is within its power to remove a sentencing court's discretion by creating a mandatory sentencing scheme. *Mendoza-Lobos v. State*, 125 Nev. 634, 640, 218 P.3d 501, 505 (2009). And sexual offenses committed against children are serious crimes for which harsh punishment imposed by the legislature serves a valid retributive purpose. *See, e.g., Mariscal-Ochoa*, 140 Nev., Adv. Op. 42, 550 P.3d at 824 ("Sexual assault of a child is undoubtedly a serious crime, and the Legislature has

the power to require a harsh punishment."). We therefore conclude that NRS 201.230(2) does not violate the prohibition against cruel and/or unusual punishment.[2] Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Thomas L. Stockard, District Judge
Churchill County Public Defender
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

[2]To the extent Potteiger invites us to require sentencing courts to make additional findings that the sentences imposed are no greater than necessary to achieve the goals of punishment, we decline to do so.