

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VINCENTE ARRIOLA-PRADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69983

FILED

AUG 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Appellant Vincente Arriola-Prado claims the district court abused its discretion at sentencing by not imposing probation and his sentence constitutes cruel and unusual punishment.

The granting of probation is discretionary. See NRS 176A.100(1)(c). See generally *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence”). This court will refrain from interfering with the sentence imposed “[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). Further, 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 disproportionate to the offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475,

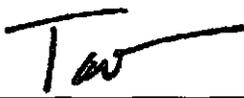
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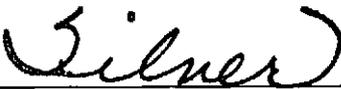
915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Arriola-Prado's prison term of 48-120 months is within the parameters provided by the relevant statutes. See NRS 193.330(1)(a); NRS 201.230(2). Arriola-Prado does not allege that the district court relied on impalpable or highly suspect evidence, nor does he allege that the sentencing statutes are unconstitutional. We conclude the district court did not abuse its discretion when imposing sentence and the sentence imposed is not so grossly disproportionate to the crime as to constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Eric Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk