IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS ROCCO TAGLIAMONTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83324-COA

NICHOLAS ROCCO TAGLIAMONTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83325-COA

ORDER OF AFFIRMANCE

Nicholas Rocco Tagliamonte appeals from judgments of conviction entered pursuant to guilty pleas in district court case no. CR20-0117 (Docket No. 83324) of sale of a controlled substance and in district court number CR21-0636 (Docket No. 83325) of sell, transport, give, or attempt to sell, transport, or give a schedule I or II substance, first offense. These cases were consolidated on appeal. *See* NRAP 3(b). Second Judicial District Court, Washoe County; David A. Hardy, Judge.

First, Tagliamonte contends that his sentences constitute cruel and unusual punishment. 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 term of 19 to 48 months in prison for Tagliamonte's conviction of sale of a controlled substance; imposed a term of 24 to 60 months in prison for Tagliamonte's conviction of sell, transport, give, or attempt to sell, transport, or give a schedule I or II substance; and ordered Tagliamonte to serve the terms consecutively. The sentences were within the parameters of the relevant statutes, *see* NRS 176.035(1); NRS 193.130(2)(c); 1999 Nev. Stat., ch. 517, § 3, at 2637-38 (former NRS 453.321); NRS 453.321(2)(a), and Tagliamonte does not allege that those statutes are unconstitutional. We have considered the sentences and the crime, and we conclude the sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment.

Second, Tagliamonte argues the district court abused its discretion at sentencing because it believed he sold pills containing fentanyl, it punished him for unsuccessfully attempting a program of treatment for his problems with drug use, and it improperly imposed consecutive sentences. Tagliamonte also notes that AB 236 reduces the length of prison terms that similarly situated offenders may receive and asserts that the district court should have considered the change in law when it imposed Tagliamonte's sentence for sale of a controlled substance.

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 the sentence imposed by the district court "[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).

The record reveals that Tagliamonte pleaded guilty to the sale of a controlled substance. Tagliamonte acknowledged in the written plea agreement and at the plea canvass that he sold five pills containing oxycodone and/or fentanyl. At the sentencing hearing, the district court noted Tagliamonte sold pills that were likely laced with fentanyl. In light of Tagliamonte's acknowledgment in the written plea agreement and at the plea canvass that he sold pills containing oxycodone or fentanyl, he has not demonstrated that the district relied on impalpable or highly suspect evidence when it discussed his sale of those pills.

The district court also found that Tagliamonte had already been given a chance to improve himself due to participating in the program of treatment. The district court further found he chose to again sell drugs for financial gain. Because of Tagliamonte's decision to sell drugs while he was participating in the program of treatment, the district court decided to sentence Tagliamonte to prison.

Next, NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively, *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015), and Tagliamonte fails to demonstrate the district court improperly sentenced him to serve

consecutive sentences. Finally, Tagliamonte did not demonstrate the district court erred due to any failure to consider AB 236 when it imposed sentence for the sale-of-a-controlled-substance conviction, because AB 236 was not in effect when Tagliamonte committed that offense on January 9, 2020. *See* 2019 Nev. Stat., ch. 633, § 112, at 4456-66; 2019 Nev. Stat., ch. 633, § 137, at 4488 (effective date of July 1, 2020). Accordingly, we conclude Tagliamonte has not demonstrated that the district court abused its discretion in imposing the sentences.

Third, Tagliamonte argues the district court erred by imposing a $4,000 fine as a condition of his assignment to a program of treatment for drug use. Tagliamonte asserts the district court was not permitted to impose a punitive fine and the fine was also excessive. Tagliamonte also contends the district court violated the Equal Protection Clause by imposing a $4,000 fine as a condition of his assignment to a program of treatment.

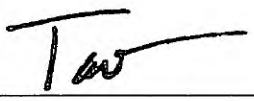
"[A] controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (internal citations omitted). "A case is moot if it seeks to determine an abstract question which does not rest upon existing facts or rights." *Newman v. State*, 132 Nev. 340, 344, 373 P.3d 855, 857 (2016), *as modified* (May 19, 2016) (internal quotation marks omitted).

Tagliamonte's challenge to the condition of his program of treatment became moot when the district court revoked his participation in that program, imposed a $4,000 fine as part of his sentence, and applied the payment of the $4,000 fine imposed as a condition of treatment to satisfy

the fine imposed as a part of his sentence.[1] Because Tagliamonte's challenge to the condition of his program of treatment does not rest upon existing rights or facts, we decline to consider his claim. Accordingly, we

ORDER the judgments of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Karla K. Butko
Washoe County District Attorney
Washoe District Court Clerk

[1]Notably, Tagliamonte does not challenge the fine imposed as a part of his ultimate sentence.