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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. 34,121

5 **JOSEPH DOMINGUEZ,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY**

8 **Jennifer E. Delaney, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Allison H. Jaramillo, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **WECHSLER, Judge.**

1 {1} Defendant appeals from the district court's order denying reconsideration of his
2 sentence of five years and six months incarceration, under the habitual offender
3 statute, for a petty crime, consisting of forgery of a check in the amount of \$225.
4 Because Defendant did not demonstrate that the district court erred in the imposition
5 of his sentence, we issued a notice of proposed summary disposition, proposing to
6 affirm. Defendant has responded to our notice with a memorandum in opposition. We
7 do not repeat the analysis contained in our notice and respond only to the arguments
8 made in response to it. Having duly considered Defendant's response, we remain
9 unpersuaded. We, therefore, affirm.

10 {2} On appeal, Defendant argues that the district court erred by ruling that it lacked
11 discretion to place Defendant on house arrest with electronic monitoring by the
12 Department of Corrections for the duration of his four-year, mandatory habitual
13 offender portion of his sentence. [DS 4; MIO 1-5] Pursuing this claim under the
14 demands of *State v. Franklin*, 1967-NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and
15 *State v. Boyer*, 1985-NMCA-029, ¶ 24, 103 N.M. 655, 712 P.2d 1, [MIO 5] Defendant
16 acknowledges in his response to our notice that his mandatory, four-year sentence
17 exceeds the eighteen-month term of imprisonment that the Legislature has declared
18 eligible for incarceration in a place other than a corrections facility, as stated in
19 NMSA 1978, Section 31-20-2(A) (1993). [MIO 4] Defendant nevertheless maintains

1 that district courts should have discretion to determine on a case-by-case basis
2 whether a non-traditional prison setting may be more appropriate. [MIO 4-5] District
3 courts are not permitted discretion to ignore legislatively mandated sentences,
4 however. *See State v. Arrington*, 1993-NMCA-055, ¶¶ 7-8, 115 N.M. 559, 855 P.2d
5 133 (noting that “in the absence of special circumstances such as a constitutional
6 violation, the trial court does not have discretion to specify the place habitual-offender
7 defendants are to serve their sentences,” when the defendants are sentenced under
8 NMSA 1978, § 31-18-17(B) (2003)); *State v. Martinez*, 1998-NMSC-023, ¶ 12, 126
9 N.M. 39, 966 P.2d 747 (“A trial court’s power to sentence is derived exclusively from
10 statute.”). As a result, we hold that the district court’s ruling was correct that
11 Defendant is not eligible to serve the habitual offender enhancement portion of his
12 sentence under house arrest.

13 {3} Defendant also asserts that his sentence—five years and six months—for a petty
14 crime, consisting of forgery of a check in the amount of \$225, violates his federal and
15 state constitutional protections against cruel and unusual punishment. [DS 4; MIO 5-
16 8] In response to our notice, Defendant has acknowledged throughout his appeal that
17 this argument was not preserved below, and therefore, is subject to review for
18 fundamental error. [DS 4; 6-8] Defendant also acknowledges that his sentence is
19 authorized by statute, [MIO 6] and contends that it is grossly disproportionate to his

1 crime. [MIO 6-8] Defendant does not supply this Court with any authority that would
2 require reversal. In fact, analogous case law compels affirmance. *See State v. Rueda*,
3 1999-NMCA-033, ¶¶ 2, 16, 126 N.M. 738, 975 P.2d 351 (holding that a defendant’s
4 eight-year, mandatory, habitual offender sentence for stealing \$253 worth of
5 merchandise, as a fifth shoplifting offense, was not so grossly disproportionate as to
6 “shock the general conscience” or “violate principles of fundamental fairness”); *State*
7 *v. Archibeque*, 1981-NMSC-010, ¶¶ 1, 5, 95 N.M. 411, 622 P.2d 1031 (holding that
8 the mandatory imposition of a life sentence for an habitual offender convicted of
9 commercial burglary does not constitute cruel and unusual punishment). [MIO 8] In
10 the absence of any rare and compelling reason of the kind described in our notice, [CN
11 4-5] we hold that Defendant’s sentence does not violate the prohibition against cruel
12 and unusual punishment.

13 {4} For the reasons stated in our notice and in this opinion, we affirm Defendant’s
14 sentence.

15 {5} **IT IS SO ORDERED.**

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17

JAMES J. WECHSLER, Judge

1 **WE CONCUR:**

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3 **RODERICK T. KENNEDY, Judge**

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5 _____
5 **M. MONICA ZAMORA, Judge**