

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARON BRADLEY LASYONE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78723-COA

**FILED**

**MAY 11 2020**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Aaron Bradley Lasyone appeals from a judgment of conviction, pursuant to a guilty plea, of invasion of the home while in possession of a deadly weapon, robbery with the use of a deadly weapon, and discharge of a firearm into a vehicle on property of a school. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Lasyone first contends the district court should have conducted an evidentiary hearing to determine whether his failure to appear at his first scheduled sentencing hearing or at a subsequent status check hearing was a material breach of the plea agreement that would release the State from its obligation to argue in favor of the stipulated sentence. Because Lasyone did not object below, he is not entitled to relief absent a demonstration of plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018), *cert. denied*, 139 S. Ct. 415 (Oct. 29, 2018). To demonstrate plain error, Lasyone must show there was an error, the error was plain or clear, and the error affected his substantial rights. *See id.* at 50, 412 P.3d at 48.

Lasyone has failed to demonstrate it was error to not conduct an evidentiary hearing. The State is released from its obligations to

perform under a guilty plea agreement when the defendant breaches the agreement, the breach is sufficiently material, and the breach was intentional. *Gamble v. State*, 95 Nev. 904, 907-08, 604 P.2d 335, 337 (1979). No evidentiary hearing is necessary to determine whether a breach of a term in a written plea agreement is material, nor is it necessary when a breach is clearly the defendant's fault. *Sparks v. State*, 121 Nev. 107, 111, 110 P.3d 486, 488 (2010); *see also Villalpando v. State*, 107 Nev. 465, 467-68, 814 P.2d 78, 80 (1991).

The State argued it was released from the plea agreement because Lasyone breached it by failing to appear at his initial sentencing hearing and at a subsequent status check hearing. Lasyone's guilty plea agreement released the State from its obligation to argue in favor of the stipulated sentence if he "fail[ed] to appear at any subsequent hearings in this case." Lasyone's failures to appear were thus material breaches of the plea agreement. The district court set the status check hearing to give Lasyone an opportunity to provide evidence that his failure to appear for his sentencing hearing was unintentional. But Lasyone failed to appear at that hearing and later claimed he lost the paperwork that showed he was in the emergency room at the time of his sentencing hearing. Further, Lasyone admitted in open court that he missed the status check hearing because he "panicked," he "should have went," he was in contact with his attorney, and he "just simply didn't know what to do" after the court issued a bench warrant for his failure to appear at the sentencing hearing. Lasyone's statements demonstrate his failure to appear at the status check

hearing was intentional and clearly his fault. We therefore conclude Lasyone is not entitled to relief on this claim.<sup>1</sup>

Lasyone next contends the State was equitably estopped from claiming he breached the guilty plea agreement. Because Lasyone did not preserve this argument below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49.

Lasyone pleaded guilty in two unrelated cases: the instant case and district court case number C-18-332680-1. Both plea agreements stipulated to concurrent sentences between the two cases. Lasyone was sentenced in case number C-18-332680-1 more than a month after his failures to appear and a month before he was sentenced in the instant case. At the sentencing hearing in case number C-18-332680-1, Lasyone's counsel assured the district court that the district court in the instant case would sentence him to a term concurrent with that imposed in case number C-18-332680-1. The State made no comment on counsel's representation. Lasyone claims that, because of this silence, the State should be estopped from taking a position contrary to counsel's statements in case number C-18-332680-1. The district court judges, the prosecutors, and defense counsel were different between both cases. Lasyone fails to demonstrate error, *see id.*, because he fails to demonstrate the prosecutor in case number C-18-332680-1 had a duty to learn of the status of the plea agreement in the instant case or to apprise the district court of that status.

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<sup>1</sup>Lasyone exhorts this court to evaluate "how the State acted in this case by not only arguing for additional time, but being able to retract from stipulations (not explicitly provided for in the guilty plea agreement) while still holding Mr. Lasyone to those same stipulations." Lasyone does not explain what stipulations he is referring to.

Moreover, Lasyone cannot demonstrate any error affected his substantial rights. To establish that the State should have been equitably estopped from arguing Lasyone breached, Lasyone had to demonstrate, among other things, that he was “ignorant of the true state of facts.” *Chanos v. Nevada Tax Comm’n*, 124 Nev. 232, 237, 181 P.3d 675, 679 (2008) (quotation marks omitted). Defense counsel in the instant case had previously stated in open court and in Lasyone’s presence that the State believed Lasyone was in breach of the plea agreement because he had missed the two court appearances. The record thus demonstrates Lasyone was not ignorant of the intent of the prosecutor in the instant case. *See id.* at 238, 181 P.3d at 679 (determining being told once in a 30-year period was sufficient to defeat estoppel). For these reasons, we conclude Lasyone is not entitled to relief on this claim.

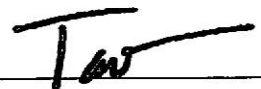
Lasyone next contends the sentencing court erred by not ordering a psychological or other evaluation of his mental health conditions to consider as mitigating evidence for the sentencing hearing. Lasyone claims the district court failed to “heed” his request for a psychological evaluation. Lasyone requested a “psychiatric examination,” and when the district court sought clarification, he agreed he meant a competency evaluation. The district court ordered the competency evaluation as requested. And Lasyone has failed to demonstrate the district court must sua sponte order evaluations for consideration as mitigation evidence. We therefore conclude Lasyone is not entitled to relief on this claim.

Finally, Lasyone contends the sentencing court abused its discretion in adjudicating him a habitual criminal. Lasyone claims the only basis for the adjudication was the stipulated sentence in the guilty plea agreement, the sentencing court merely relied on the stipulation, and the

court did not understand it had the discretion not to impose the sentence. We will not disturb a habitual criminal adjudication so long as the record, as a whole, demonstrates “the sentencing court was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication and that the court exercised its discretion.” *Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000). At his plea colloquy, the district court—which was also the sentencing court—informed Lasyone it was not bound by the stipulated sentence and could decide not to treat him as a habitual offender. And nothing at the sentencing hearing suggested the court failed to exercise its discretion. Thus, the totality of the circumstances indicates the district court was aware that it had discretion in whether to adjudicate Lasyone a habitual criminal. We therefore conclude Lasyone is not entitled to relief on this claim.

Having concluded Lasyone is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Carolyn Ellsworth, District Judge  
The Law Office of Kristina Wildeveld & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk