

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS TRAVON TORRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79765-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Carlos Travon Torres appeals from a judgment of conviction entered pursuant to a no contest plea to second-degree murder with the use of a deadly weapon. Sixth Judicial District Court, Humboldt County; William G. Rogers, Senior Judge.


First, Torres claims the State caused an error by asking the district court to impose a harsher sentence based on Torres' decision to stand silent. He argues that the State's request violated his Fifth Amendment privilege against self-incrimination. However, he did not object to the request, and therefore, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). We conclude Torres has not demonstrated plain error because he has not shown that the district court's decision to impose the harsher sentence was based solely on his decision to remain silent. *Cf. Bushnell v. State*, 97 Nev. 591, 593, 637 P.2d 529, 531 (1981) (reversing a sentence where the district court expressly stated its sole reason for imposing a harsher sentence was the defendant's exercise of his Fifth Amendment rights).

Second, Torres claims that the district court's failure to maintain courtroom decorum during sentencing violated his right to due process and constituted plain error. He argues that one of the victim-impact speakers was allowed to act inappropriately by giving a statement that was unreasonable, provocative, inciting, and full of vulgarities. However, he did not object to this breach of courtroom decorum, and therefore, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48. We conclude that Torres has not demonstrated actual prejudice or a miscarriage of justice because he has not shown that the district court was affected by the inappropriate statements. *See Dieudonne v. State*, 127 Nev. 1, 10, 245 P.3d 1202, 1208 (2011); *see also Randell v. State*, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) (“[J]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence.”).

Third, Torres claims the district court abused its discretion by sentencing him to life in prison with the possibility of parole after 10 years instead of a definite term of 25 years because its decision was not supported by substantial evidence. We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Here, Torres' sentence for second-degree murder with the use of a deadly weapon falls within the parameters of the relevant statutes. *See* NRS 193.165(1); NRS 200.030(5)(a). Torres has not alleged that the district court relied on impalpable or highly suspect evidence. *See Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). We note the record plainly demonstrates that Torres stabbed his victim 97 times. And we conclude the district court did not abuse its discretion by imposing the greater sentence.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Sixth Judicial District Court
Hon. William G. Rogers, Senior Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk