IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78643-COA

FILED

AUG 12 2020

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

ORDER OF AFFIRMANCE

Luis Angel Castro appeals from a judgment of conviction entered pursuant to a guilty plea of first-degree kidnapping resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

First, Castro claims the district court abused its discretion by failing to correct an error in his presentence investigation report (PSI). He argues that he objected to the error prior to being sentenced, the State stipulated to the error, and the district court refused to correct the error. However, his argument is not supported by the record on appeal.

The record plainly demonstrates that defense counsel informed the district court that "there is one stipulated correction to [Castro's] PSI. I don't believe there's any reason we wouldn't be able to put that on the record and then proceed." Defense counsel went on to explain that,

> With respect to page 2, there are three boxes which the PSI author can check in this case with an X, indicating age at first arrest. On Mr. Castro's PSI, it's checked "19 or younger." That's not

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> substantiated by his arrest history later in the report. The parties have agreed to have that removed. And I believe a "24 and older" would be the appropriate box that should have been checked in that instance.

The State agreed with defense counsel's explanation. The district court stated, "Okay. That doesn't rise to the level of a *Stockmeier* issue, I don't believe."[1] And defense counsel responded, "I don't believe [so] either, Your Honor."

This record shows only that Castro wanted to put the error on the record and then proceed with the sentencing. It does not show that Castro asked the district court to make a correction to the PSI. Moreover, defense counsel explicitly agreed that the error did not rise to the level of a *Stockmeier* issue. We conclude that Castro forfeited this claim of error by specifically informing the district court that he wanted only to put the error on the record and then proceed with the sentencing, and we decline to review the error on appeal. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 49 (2018) ("[T]he decision whether to correct a forfeited error is discretionary.").

Second, Castro claims the district court abused its discretion by failing to award him 1,112 days' credit for time spent in presentence confinement. After imposing Castro's sentence, the district court stated, "So that will be the sentence. I don't think credit [for] time served matters. Anything else on the record, counsel?" Defense counsel responded "No."

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[1]*See Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 255 P.3d 209 (2011).

Given this record, we conclude Castro forfeited this claim of error by failing to object in the court below and, because he has not argued plain error in this court, we decline to review this error on appeal. *See id.* at 50, 412 P.3d at 48.

Third, Castro claims his sentence constitutes cruel and unusual punishment for the following reasons. He did not have a history of violent offenses and was under the influence of drugs when he committed the crime. He was not aware that the crime would become so violent and left when it became violent. His DNA was not found on the weapon. He did not call the police because he was afraid that his codefendants would harm his family. He has PTSD symptoms; bipolar symptoms; and suffers from depression, anxiety, and drug addiction. And he once attempted suicide.

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, 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).

Here, Castro's life-without-the-possibility-of-parole sentence falls within the parameters of the relevant statute. *See* NRS 200.320(1)(a). He does not allege that the statute is unconstitutional. And we conclude

the sentence imposed is not grossly disproportionate to his crime and does not constitute cruel and unusual punishment.

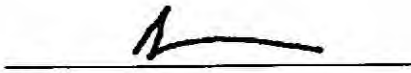
Fourth, Castro claims cumulative error deprived him of a fair sentencing proceeding. However, we conclude Castro failed to demonstrate any error, so there is nothing to cumulate.

Having concluded Castro is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk