

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS ALLEN KAMAN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80673-COA

FILED

MAY 14 2021

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

ORDER OF AFFIRMANCE

Douglas Allen Kaman, Jr., appeals from a judgment of conviction, entered pursuant to a guilty plea, of sale of a schedule I or II controlled substance, prohibited person in possession of a firearm, and trafficking in a controlled substance. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Kaman argues the division of parole and probation erred by deviating from the raw score number in the presentence investigation report and the district court erred by relying on that deviation. Kaman did not object below in the first instance, and therefore, he did not preserve the error. "The failure to preserve an error . . . forfeits the right to assert it on appeal." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). We may nevertheless review a forfeited error for plain error, *id.*, but "the decision whether to correct a forfeited error is discretionary," *id.* at 52, 412 P.3d at 49. Kaman bears the burden of demonstrating plain error. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005). Because he failed to argue

plain error on appeal, we decline to exercise our discretion and review these alleged errors on appeal.

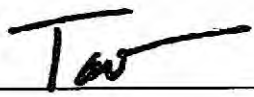
Kaman also argues his sentences were cruel and unusual punishment because the Legislature changed the range of punishments for two of his crimes. Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional 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). “[T]he proper penalty is the penalty in effect at the time of the commission of the offense,” unless “the Legislature clearly expresses its intent to apply a law retroactively.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

The sentences imposed of three consecutive terms of 24 to 72 months in prison are within the parameters provided by the relevant statutes in effect at the time Kaman committed his crimes. See NRS 202.360(1); NRS 453.321(2)(a) (1999); NRS 453.3385(1)(a) (2015). And the Legislature did not express that the amendments to the statutes in 2020 would apply retroactively. Further, Kaman does not allege that the sentencing statutes are unconstitutional. Finally, we conclude the

sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Gary Fairman, District Judge
David D. Loreman
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk