

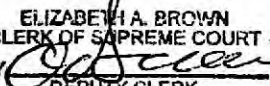
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH MELLOR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82004-COA

**FILED**

AUG 30 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joseph Mellor appeals from a judgment of conviction entered pursuant to a guilty plea of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

First, Mellor argues the district court erred by concluding he violated the failure-to-appear (FTA) clause contained within the guilty plea agreement and by subsequently permitting the State to provide argument concerning the appropriate sentence. At the sentencing hearing, Mellor conceded he violated the FTA clause, and he thus waived his right to raise this issue on appeal. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 50 (2018); *see also Ford v. State*, 122 Nev. 796, 805, 138 P.3d 500, 506 (2006) (recognizing that waiver “is whether the defendant made an intentional relinquishment or abandonment of a known right or privilege” (internal quotation marks omitted)). Therefore, we decline to consider this issue on appeal.

Second, Mellor argues the district court abused its discretion in issuing a bench warrant after he failed to appear at the initial sentencing hearing. Mellor contends he was not aware of the date of that hearing and the district court did not realize it had the discretion to decline to issue a

warrant for his arrest. Mellor did not object to the issuance of a bench warrant, and thus, he is not entitled to relief absent a demonstration of plain error. See *Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

The record demonstrates that Mellor did not appear at the initial sentencing hearing. The record reflects the district court considered whether or not to issue a bench warrant for Mellor's arrest pursuant to NRS 178.508(1)(b). The district court ultimately decided to issue the warrant. Mellor does not demonstrate the district court abused its discretion in this regard, see *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason."), and thus fails to demonstrate plain error affecting his substantial rights. Therefore, Mellor is not entitled to relief based upon this claim.

Third, Mellor argues his trial-level counsel abandoned him because counsel did not notify Mellor of the date of the initial sentencing hearing, did not oppose issuance of a bench warrant, and stipulated that Mellor violated the FTA clause. An attorney abandons a client when the attorney-client relationship has been severed and any error cannot fairly be attributed to the client. *Maples v. Thomas*, 565 U.S. 266, 281 (2012). Mellor did not demonstrate counsel abandoned him or severed the attorney-client relationship. Rather, the record clearly shows that counsel represented Mellor throughout the trial-level proceedings, and Mellor's assertions of

attorney error do not constitute abandonment by counsel. Therefore, Mellor is not entitled to relief based upon this claim.<sup>1</sup>

Fourth, Mellor argues the district court abused its discretion when imposing sentence because it was not fully informed concerning the case, made unprofessional comments, and was unprepared for the sentencing hearing. Mellor also contends the district court improperly failed to articulate its reasons for imposing a prison sentence.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

At the conclusion of the sentencing hearing, the district court imposed a term of 12 to 36 months in prison, which was within the parameters provided by the relevant statute. *See* NRS 200.471(2)(b). And Mellor does not allege that the district court relied on impalpable or highly suspect evidence. As to his specific claims, the record demonstrates that the district court listened to the arguments of the parties and heard Mellor’s explanation for failing to attend the initial sentencing hearing. Thus,

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<sup>1</sup>To the extent Mellor attempts to raise claims of ineffective assistance of counsel, such claims “may not be raised on direct appeal, unless there has already been an evidentiary hearing.” *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995). Because there has not been an evidentiary hearing concerning an ineffective-assistance-of-counsel claim, such claims are not appropriately raised on direct appeal, and we decline to consider them in the first instance.

Mellor fails to demonstrate the district court was not fully informed regarding this case prior to imposing sentence. Mellor also failed to demonstrate that the district court made unprofessional comments concerning this matter or that the district court was unprepared. Moreover, Mellor does not demonstrate that the district court erred by failing to articulate the basis for its sentencing decision. *See Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998). Considering the record before this court, we conclude Mellor fails to demonstrate the district court abused its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 23  
AMD Law, PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk