

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSWALD JOEL LIANG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82787-COA

FILED

DEC 01 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND REMANDING TO CORRECT
JUDGMENT OF CONVICTION*

Oswald Joel Liang appeals from a judgment of conviction of stop required upon signal of a peace officer, endangering any other person, entered pursuant to a guilty plea and felon in possession of a firearm entered pursuant to a no contest plea. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

First, Liang argues that his sentence constitutes cruel and unusual punishment because the district court imposed the sentence for this case consecutive to his sentence for a separate, but related, criminal matter. 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).

The sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 202.360(1); NRS 484B.550(3)(b), and Liang does not allege that those statutes are unconstitutional. Moreover, NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively, *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015), and Liang fails to demonstrate the district court improperly sentenced him to serve his sentence in this matter consecutively to his sentence for his other criminal case. We conclude the sentence imposed is not grossly disproportionate to the crimes and does not constitute cruel and unusual punishment. Therefore, Liang is not entitled to relief based upon this claim.

Second, Liang argues the State committed prosecutorial misconduct during the sentencing hearing by stating that he had a prior conviction for felon in possession of a firearm. Liang contends that his actual prior conviction was for possession of a firearm with an altered or removed serial number, and he was prejudiced when the State misinformed the district court about his criminal record. Liang did not object to the challenged statement, and thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). 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.

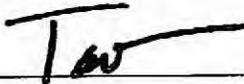
We have reviewed the prosecutor's statement concerning Liang's prior conviction and conclude Liang does not demonstrate plain error. Liang did not object to the prosecutor's statement, but Liang's counsel subsequently informed the district court that Liang had been convicted of possession of a firearm with an altered or removed serial number and had recently finished serving the sentence imposed for that matter. Moreover, the presentence investigation report accurately listed Liang's prior conviction. In addition, the district court made no reference to the challenged statement when imposing sentence, and Liang does not demonstrate the district court's sentencing decision was affected by a mistake concerning his criminal history. *See Randell v. State*, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) ("Judges 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." (brackets and internal quotation marks omitted)). Accordingly, Liang fails to demonstrate the State's arguments at the sentencing hearing amounted to error affecting his substantial rights.

Finally, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Liang entered a guilty plea for both of his offenses when he was actually convicted of felon in possession of a firearm pursuant to a plea of no contest. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the district court to enter a corrected judgment of conviction clarifying that Liang was convicted of stop required upon signal of a peace officer endangering any other person pursuant to a guilty plea

and that he was convicted of felon in possession of a firearm pursuant to a no contest plea. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Leon Aberasturi, District Judge
Walther Law Offices, PLLC
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk