

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADAM ANTHONY BERNARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83323-COA

FILED

SEP 12 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Adam Anthony Bernard appears from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of voluntary manslaughter. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Bernard argues the district court abused its discretion at sentencing and failed to keep an open mind. Bernard claims the district court failed to consider mitigating information: his lack of criminal history, his character letters, the predatory conduct of the victim, the victim's pre-existing conditions, Bernard's conduct while on bail, and his expert's testimony regarding modes of violence and acute stress disorder. He also claims the district court abused its discretion at sentencing because the sentence offends the Legislature's creation of a sentencing range and he received the harshest possible sentence even though other defendants may have engaged in worse conduct. Finally, he claims the district court abused

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

its discretion because it gave the video of the incident more weight than other relevant evidence.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court 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); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

The sentence imposed of 4 to 10 years in prison is within the parameters provided by the relevant statute. *See* NRS 200.080. And Bernard fails to demonstrate that the district court relied on impalpable or highly suspect evidence. The district court specifically stated it read and considered the sentencing memorandum that outlined Bernard’s lack of criminal history, the conduct of the victim, the victim’s pre-existing conditions, and Bernard’s conduct while out on bail. The district court also stated it read and considered the character letters. Further, the district court heard the expert testify at sentencing, and Bernard fails to demonstrate that the district court did not consider this testimony.

The district court found that Bernard’s conduct depicted in the video—his kicking and punching the victim numerous times after the victim was no longer responsive—was egregious, and the district court sentenced

him accordingly.² Moreover, Bernard failed to demonstrate that sentencing Bernard to the maximum possible sentence “offended the Legislature’s creation of a sentencing range,” especially given the brutal attack on the victim. *See Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990) (holding that “sentencing is an individualized process”); *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). Finally, Bernard fails to demonstrate the district court failed to keep an open mind. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion when sentencing Bernard.

Next, Bernard claims the district court failed to provide a fair sentencing hearing. First, he claims the district court failed to read and consider all of the documentation submitted for sentencing and, therefore, failed to keep an open mind. As stated above, the district court specifically stated that it read and considered all of the documentation submitted for sentencing. Therefore, we conclude he failed to demonstrate error by the district court.

²Bernard also fails to demonstrate that multiple viewings of the video during sentencing was error or caused the district court to improperly put more weight into the video rather than the mitigating evidence. *See NRS 176.015(6)* (stating the court may “consider any reliable and relevant evidence at the time of sentencing”).


Second, Bernard claims the district court failed to maintain decorum in the courtroom. Specifically, he claims the district court failed to admonish the people in the courtroom when they made audible comments during the sentencing hearing. Because Bernard did not object below, 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. "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a "grossly unfair" outcome)." *Id.* at 51, 412 P.3d at 49.

Bernard fails to identify the substance of the comments made by the people in the courtroom and fails to demonstrate the district court heard the comments or considered those comments while sentencing Bernard. Bernard points out in the brief that counsel stated to the district court that she heard some comments made by the victim's stepfather while he was a spectator, but this statement does not demonstrate that the district court heard the statements or considered them. Therefore, we conclude Bernard fails to demonstrate plain error that affected his substantial rights.

Third, Bernard claims the district court failed to control a witness, the victim's stepfather. Bernard claims the stepfather should have been admonished for directly addressing counsel during his victim impact statement. Because Bernard did not object below, he is not entitled to relief absent a demonstration of plain error. *See id.* at 50-51, 412 P.3d at 48-49.

Bernard fails to demonstrate that the victim's stepfather's comments were error. A relative of the victim is allowed to "reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution." NRS 176.015(3)(b). The stepfather was replying to statements made by counsel about the victim and the defendant. Bernard fails to demonstrate that the statements made by the stepfather were unreasonable or not about the crime, the person responsible, and/or the impact of the crime on the victim. Therefore, we conclude Bernard fails to demonstrate plain error that affected his substantial rights.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Thomas W. Gregory, District Judge
Pence & Associates
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk