

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY MICHAEL CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84025-COA

JEFFREY MICHAEL CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84028-COA

FILED

DEC 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeffrey Michael Clark appeals from his judgments of conviction. In district court case no. C-20-352144-1 (Docket No. 84025), Clark was convicted, pursuant to a guilty plea, of one count of sexual assault. In district court case no. C-20-349141-1 (Docket No. 84028), Clark was convicted, pursuant to a guilty plea, of two counts of sexual assault on a minor under the age of 16 years and two counts of lewdness with a child under the age of 14 years. These cases were consolidated on appeal. See NRAP 3(b). Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge and Jacqueline M. Bluth, Judge.

First, Clark argues the district court erred by involving itself in the plea negotiations by participating in the settlement conference. Because Clark 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

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“(1) there was error; (2) the error is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [his] substantial rights.” *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted). “[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.

Here, Clark agreed to participate in a settlement conference that included him, the district attorney, and a senior district court judge who was a different individual than the presiding trial judges. This was the correct procedure under Supreme Court Rule 252(2)(a) for a settlement conference in a criminal case. Therefore, Clark fails to demonstrate error. Further, Clark fails to demonstrate his substantial rights were violated as he fails to allege how the senior district court judge’s participation in the plea negotiations affected his decisions to plead guilty. Therefore, we conclude Clark fails to demonstrate he is entitled to relief.

Second, Clark argues the district court abused its discretion by denying his presentence motions to withdraw his guilty pleas.¹ Specifically, he claims that his pleas were not knowingly, intelligently, or voluntarily entered because counsel was ineffective during the pre-plea stages, specifically with the pre-plea investigation.² A defendant may move to

¹The motions were filed in each district court case and were substantively identical.

²Clark also argues that the district court should have granted his presentence motions to withdraw based on the senior judge’s participation in the plea settlement conference. Clark did not raise this claim in his motions below; for this reason and because, for the reasons discussed previously, the alleged error does not appear clearly from the record, we decline to consider this claim for the first time on appeal. *See Bryant v.*

withdraw a guilty plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). To this end, the Nevada Supreme Court disavowed the standard previously announced in *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001), which focused exclusively on whether the plea was knowingly, voluntarily, and intelligently made, and affirmed that “the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just.” *Stevenson*, 131 Nev. at 603, 354 P.3d at 1281. We review the district court’s decision on a motion to withdraw a guilty plea for an abuse of discretion. *Bryant*, 102 Nev. at 272, 721 P.2d at 368.

In his motions, Clark did not explain what more investigation counsel should have done. At the evidentiary hearings, Clark testified that counsel should have spoken with his daughter who would have refuted two of the victims’ accounts and should have sought a third victim’s psychological records. Counsel testified that Clark did not tell him about his daughter, and he explained to Clark that the psychological records were confidential. Counsel also testified that even refuting two of the victims’ accounts would not have been sufficient to reduce the amount of time Clark was facing because the evidence against him for the third victim was overwhelming. Further, he testified that he informed Clark that if Clark

State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (holding that challenges to the validity of the plea must be raised in the district court in the first instance), *as limited by Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n. 1 (1994) (holding that this court may consider challenges to the validity of a guilty plea where the error appears clearly in the record).

chose to go to trial, he would have done more investigation. The district court judges found counsel to be more credible, especially given the thorough plea canvasses done by the respective judges. Therefore, the district court judges concluded Clark failed to demonstrate a fair and just reason to withdraw his pleas. Substantial evidence supports the decisions of the district court judges, and we conclude the district court judges did not abuse their discretion by denying the motion.³

Third, Clark argues the district court judges erred by improperly limiting the evidentiary hearings on the motions to withdraw his guilty pleas. Specifically, he claims the district court judges only allowed limited, superficial evidentiary hearings that were inadequate to raise the necessary factual support needed to show the pleas were involuntary and coerced. Clark fails to assert how the evidentiary hearings infringed on his ability to present evidence because he fails to state what further evidence could have been presented. Therefore, we conclude Clark fails to demonstrate he is entitled to relief.

Fourth, Clark argues the district court judges abused their discretion at sentencing because the aggregated sentence between the two cases was excessively harsh, disproportionate to the crimes, and constituted cruel and unusual punishment. Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the

³To the extent Clark argues that he rebutted the presumption of the guilty pleas’ validity because the totality of the circumstances showed he did not make knowing, voluntary, and intelligent pleas, Clark fails to provide cogent argument to support this claim, and we therefore decline to consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”).

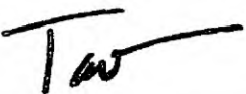
statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin 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 sentences imposed of concurrent terms of 10 years to life in prison and 25 years to life in prison are within the parameters provided by the relevant statutes, *see* NRS 200.366(2)(b), 3(b); NRS 201.230(2), and Clark does not allege that those statutes are unconstitutional. Here, Clark received the sentences he bargained for. We conclude the sentences imposed are not grossly disproportionate to the crimes or excessively harsh and they do not constitute cruel and unusual punishment.

Finally, Clark argues that cumulative error entitles him to relief. Because Clark fails to demonstrate any error, he fails to demonstrate he was entitled to relief. *See Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (noting cumulative error claims require “multiple errors to cumulate”). Accordingly, we

ORDER the judgments of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 9
Hon. Jacqueline M. Bluth, District Judge
Terrence Michael Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk