

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HEATHER LOUISE WALLEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84826-COA

**FILED**

MAY 11 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Heather Louise Wallen appeals from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit burglary and battery causing substantial bodily harm. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Wallen argues that the district court erred by failing to sua sponte continue the sentencing hearing after it did not grant her counsel's oral request, which was made at the sentencing hearing, to withdraw from this case. Because Wallen did not request a continuance, she is not entitled to relief absent a demonstration of plain error. To demonstrate plain error, an appellant must show that: "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). "[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.

In general, a matter should be continued if the defendant did not have adequate time to prepare for the court proceedings. *See Higgs v.*

*State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). Wallen has not alleged that she did not have adequate time to prepare for the sentencing hearing, nor has she alleged error affecting her substantial rights stemming from the court's failure to continue the sentencing hearing. We therefore conclude that Wallen has not demonstrated the district court erred by failing to continue the sentencing hearing. Accordingly, Wallen fails to meet her burden to demonstrate plain error, and we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kimberly A. Wanker, District Judge  
Andrew W. Coates  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk