IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL ERIC CAFFEJIAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84329-COA

ORDER OF AFFIRMANCE AND REMANDING TO CORRECT JUDGMENT OF CONVICTION

Daniel Eric Caffejian appeals from a judgment of conviction, entered pursuant to an *Alford*[1] plea, of attempted lewdness with a child under 14 years of age and coercion (sexually motivated). Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

First, Caffejian argues the district court violated his Fourth Amendment rights when it required him to submit to drug testing without probable cause. Caffejian further contends that the district court requires all defendants to drug test before every court hearing in violation of the Fourth Amendment. Constitutional errors that arise before entry of a guilty plea are ordinarily waived by entry of the guilty plea, *see Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975), and Caffejian does not argue that he preserved this alleged error as part of his *Alford* plea,[2] *see* NRS 174.035(3). Therefore, we conclude Caffejian's claim is waived.

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

[2]An *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147

Second, Caffejian argues the district court erred by denying his brief on procedural grounds when the district court had ordered him to submit the brief. The record indicates that the district court requested the parties to submit briefs by February 8, 2022, addressing certain issues regarding potential victim impact statements. Caffejian filed an omnibus motion that addressed these issues and raised additional claims. The motion was dated and filed on February 9, 2022. To the extent Caffejian's omnibus motion briefed the issues requested, the motion was filed after the deadline set by the district court. Therefore, we conclude Caffejian is not entitled to relief on this claim.

Third, Caffejian argues the district court erred by refusing to consider his motion for an independent psychological evaluation of the victim. Under District Court Rule (DCR) 13(1), "[a]ll motions shall contain a notice of motion . . . setting the matter on the court's law day or at some other time fixed by the court or clerk." Caffejian submitted his motion as part of his omnibus motion, which was filed two days prior to his sentencing hearing. The notice of motion did not set the matter for discussion at the sentencing hearing. The district court declined to consider the motion on its merits because the motion did not comply with DCR 13 and the State had not had an opportunity to respond. Caffejian does not argue that the district court's determinations were erroneous. Therefore, Caffejian fails to demonstrate the district court erred by refusing to consider his motion.

Fourth, Caffejian argues the district court erred by allowing the victim's mother to testify at sentencing after the victim had testified. Caffejian contends that the victim's mother's testimony was "prejudicial,

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n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 355 P.3d 791 (2015).

needless, and rendered the sentence fundamentally unfair." Caffejian conceded below, and concedes on appeal, that the victim's mother constitutes a "victim" for the purposes of giving a victim impact statement at sentencing. As a result, the victim's mother had a constitutional and statutory right to express her views at sentencing. *See* Nev. Const. art. 1, §§ 8A(1)(h), (7); NRS 176.015(3), (5)(d)(3); *Wood v. State*, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995). And Caffejian does not identify which portion of the victim's mother's testimony was improper. Therefore, we conclude Caffejian is not entitled to relief on this claim.

Fifth, Caffejian argues the district court abused its discretion by imposing the maximum possible sentence. Caffejian contends that he had no prior criminal history and a psychosexual evaluation indicated he was a low risk to reoffend. Caffejian further contends that the district court relied on impalpable and highly suspect evidence: the victim's mother's testimony and his failed drug tests.

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).

Caffejian's prison sentences of 96 to 240 months for the count of attempted lewdness with a child under 14 years of age and 28 to 72 months for the count of coercion (sexually motivated) are within the parameters

provided by the relevant statutes. *See* 2013 Nev. Stat., ch. 229, § 3, at 977-78 (NRS 193.330(1)(a)(1)); NRS 201.230(2); NRS 207.190(2)(a). Moreover, Caffejian fails to demonstrate that the district court considered impalpable or highly suspect evidence. As previously discussed, the victim's mother had a right to express her views at sentencing, and Caffejian does not identify any specific testimony that constituted impalpable or highly suspect evidence. And the record does not indicate the district court considered Caffejian's failed drug tests in making its sentencing decision. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Caffejian.

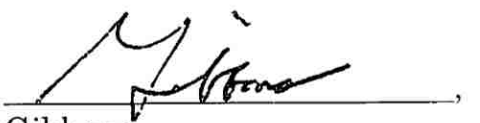
Sixth, Caffejian argues that the cumulative effect of the district court's errors require reversal and remand for a new sentencing hearing before a different district court judge. Even where multiple errors are harmless individually, their cumulative effect may violate a defendant's due process rights. *See Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008). Caffejian has not demonstrated error in any of the claims properly before this court; therefore, we conclude Caffejian is not entitled to relief on this claim. *See McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009).

Finally, Caffejian argues that remand is necessary to correct a clerical error in the judgment of conviction. The judgment of conviction states the maximum prison term for the count of coercion is "two hundred and seventy-two (72) months," but the maximum sentence allowed—and the district court's actual pronouncement—was for a maximum prison term of seventy-two (72) months. *See* NRS 207.190(2)(a). Thus, the judgment of conviction appears to contain a clerical error. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we

direct the district court, upon remand, to enter a corrected judgment of conviction stating the correct maximum prison term for the count of coercion.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED and REMAND to the district court to correct the judgment of conviction.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kimberly A. Wanker, District Judge
Morton Law, PLLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk