

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAYSAN MATTHEW GAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85615-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jaysan Matthew Gal appeals from a judgment of conviction, entered pursuant to a guilty plea, of statutory sexual seduction. Fifth Judicial District Court, Nye County; Steven R. Kosach, Senior Judge.

Gal argues the district court abused its discretion at sentencing by relying on a 2018 psychosexual evaluation and denying him probation based on that evaluation. Gal did not object to the district court's consideration of the 2018 psychosexual evaluation below. Therefore, his claim is subject to plain error analysis. 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.

The granting of probation is discretionary. See NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . .").

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).

Gal was originally convicted in 2018, pursuant to a jury verdict, of numerous sexual offenses. A psychosexual evaluation was produced that found him to be a moderate-high risk to reoffend. That conviction was overturned on appeal. On remand, Gal pleaded guilty to statutory sexual seduction and a new psychosexual evaluation was produced finding him to be a low-moderate risk to reoffend. The district court stated it read both evaluations, considered the briefs of counsel, and had sat on the case for several years. The district court found Gal to be a high-risk to reoffend and sentenced him to 12 to 48 months in prison.

Gal fails to demonstrate that the district court’s consideration of the 2018 psychosexual evaluation was an error that was plain from a casual inspection of the record. Gal agreed in the guilty plea agreement that the district court was allowed to consider “all facts and circumstances involved with this case including any/all dismissed or reduced charges.” Gal also fails to demonstrate that the information in the 2018 psychosexual evaluation was founded on facts supported only by impalpable or highly suspect evidence. Circumstances had changed between the first and second evaluations, and Gal pointed out those changed circumstances to the district court. Further, as stated above, the district court did not rely solely on the 2018 psychosexual evaluation when sentencing Gal. Therefore, we

conclude that Gal fails to demonstrate he is entitled to relief. Accordingly,
we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Robert W. Lane, District Judge
Morton Law, PLLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk