IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDIBLU ELQUIST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85022-COA

FILED

SEP 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brandiblu Elquist appeals from a judgment of conviction, entered pursuant to a guilty plea, of residential burglary. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

First, Elquist appears to argue that the district court erred by not disqualifying the District Attorney's Office based on the victims' ties to county government. Elquist did not seek the disqualification of the District Attorney's Office below. Therefore, we review for plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain, meaning that it is clear under current law from a casual inspection of the record, and the error affected appellant's substantial rights. *Id.* "[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.

A casual inspection of the record does not demonstrate a conflict of interest that "would render it unlikely that the defendant would receive

a fair trial unless the entire prosecutor's office is disqualified from prosecuting the case."[1] *State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. 158, 165, 321 P.3d 882, 886 (2014). Accordingly, Elquist fails to demonstrate error plain from the record. Therefore, we conclude Elquist is not entitled to relief based on this claim.

Second, Elquist argues that the State was required to disclose the victims' ties to county government so she could have pursued disqualification or taken some other action to protect the fairness of the proceedings. Elquist did not raise this claim below. Therefore, we review for plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48. Elquist merely speculates that the State was aware of the victims' alleged ties to the county government. Further, she does not provide binding authority to support her argument, and this court is not aware of any authority requiring the State to disclose information of a victim's ties to county government so as to allow the defendant to move to disqualify the District Attorney's Office or take any other protective action. *Cf. Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (providing that the State must disclose evidence "if it

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[1]Elquist asks this court to take judicial notice of two websites purporting to show that the victims work or worked for the county. However, this court's review is limited to the record made in and considered by the district court. *See Rippo v. State*, 134 Nev. 411, 429, 423 P.3d 1084, 1102 (2018) (providing that "appellate counsel could not have expanded the record before this court to include evidence that was not part of the trial record"); *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (providing that this court lacks the "power to look outside of the record of a case" and "cannot consider matters not properly appearing in the record on appeal"). Therefore, we decline to consider evidence outside the record on appeal.

provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks"). Accordingly, Elquist fails to demonstrate error plain from the record or that any alleged error affected her substantial rights. Therefore, we conclude Elquist is not entitled to relief based on this claim.

Third, Elquist argues the district court abused its discretion in imposing her sentence. Elquist alleges she should have been granted probation and was punished more harshly because of the victims' ties to county government. Elquist also alleges that the district court imposed a sentence greater than the one recommended by the State and failed to explain its reasoning for the sentence imposed.

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).

Elquist's 22-to-84-month prison sentence is within the parameters provided by the relevant statute. *See* NRS 205.060(2)(d). The record demonstrates that the district court heard the parties' sentencing arguments, including Elquist's lack of criminal history; heard the testimony

of the victims; and read the presentence investigation report and letters written on Elquist's behalf. Elquist fails to demonstrate that the district court relied on impalpable or highly suspect evidence.[2] Further, the district court is not required to follow the sentencing recommendations of the parties, *see, e.g., Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972), or give its reasons for imposing a particular sentence, *see Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998). Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Elquist.

Finally, Elquist argues that her counsel was ineffective. A claim of error related to an attorney's alleged ineffectiveness must generally be raised in a postconviction habeas petition. *See Gibbons v. State,* 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981) (holding that a claim for ineffective assistance of counsel is properly challenged in postconviction relief because factual issues are best determined in the district court). "[W]e have generally declined to address claims of ineffective assistance of counsel on direct appeal unless there has already been an evidentiary hearing or where an evidentiary hearing would be unnecessary." *Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001), *abrogated on other grounds by Rippo*, 134 Nev. at 423 n.12, 423 P.3d at 1097 n.12.

Here, Elquist alleges her counsel failed to investigate the victims' ties to local government or to move to continue sentencing to allow

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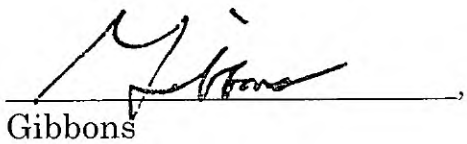
[2]Elquist acknowledges that she is "unable to fully demonstrate" that the victims' ties to county government were "a major driver" in how her case was resolved.

her to provide evidence in mitigation. Because no evidentiary hearing was conducted and Elquist's claims implicate unresolved factual issues, we decline to address Elquist's claims of ineffective assistance of counsel on direct appeal.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Thomas L. Stockard, District Judge
Kyle E. Edgerton
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk