

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ANTONIO RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85723-COA

FILED

SEP 18 2023

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

ORDER OF AFFIRMANCE

Jose Antonio Rodriguez appeals from a judgment of conviction, entered pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

First, Rodriguez argues the district court abused its discretion by sentencing him to the maximum sentence despite significant mitigation evidence being presented at sentencing. 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).

The aggregate sentence of 18 years to life in prison is within the parameters provided by the relevant statutes. *See* NRS 193.165(1); 200.030(5). And Rodriguez does not demonstrate that the district court relied on impalpable or highly suspect evidence. Notably, Rodriguez has not disputed the egregious facts of the crime as related by the State at the sentencing hearing: Rodriguez stabbed and beat his girlfriend to death in front of his minor children and then forced those children to clean up after the crime and help dispose of her body. Finally, contrary to Rodriguez's claim, the district court specifically stated it considered Rodriguez's mitigating evidence when imposing sentence. Having considered the sentence and the egregious facts of the crime, we conclude the district court did not abuse its discretion at sentencing.

Second, Rodriguez argues the district court was biased against him at sentencing. Rodriguez claims that two statements made by the district court indicate that the district court was biased against him. The district court first stated, "I am familiar with loss, loss caused by another. I shared a text with my wife who shares that loss with me. I told her I was about to come into the courtroom and confront evil facts." The district court also stated, "[T]he question is what do you do tomorrow and what do you do Thursday. Is today Wednesday? What do you do Friday and what do you do on Christmas Day and what do you do seven years from now on Christmas. That's the real question." Rodriguez argues that the first statement showed the district court's personal animus toward him and that both statements showed the district court did not consider the evidence presented that Rodriguez had turned his life around.

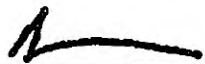
Rodriguez did not object to either of the statements and thus is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show that: “(1) there was an ‘error’; (2) the error is ‘plain,’ 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.” *Id.* at 50, 412 P.3d at 48. “[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. “[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence.” *Cameron*, 114 Nev. at 1283, 968 P.2d at 1171.

In context, these statements do not demonstrate error plain from the record. Rather, the statements demonstrate the district court considered Rodriguez as a whole and not just the facts of the crime. The first statement specifically addressed those affected by Rodriguez’s crime, and the district court judge went on to say, “Most times our lives are a continuum of a lot of bad and some good or a lot of good and some bad. And I think it’s inappropriate for me to be emotionally reactive to Mr. Rodriguez even though I condemn what he did as evil.” The second statement was made in the course of a longer statement in which the district court judge shared his hope that Rodriguez would continue to make good choices in the future regardless of how much prison time he received. Further, the district court specifically stated it had considered the mitigation evidence presented

and was impressed by the work Rodriguez had done while in jail. Thus, Rodriguez failed to demonstrate the district court judge had closed his eyes to the presentation of the evidence; therefore, he failed to demonstrate any error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk