

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL NICHOLAS EGGERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85787-COA

FILED

NOV 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

Daniel Nicholas Eggers appeals from a judgment of conviction, pursuant to a jury verdict, of escape from custody. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

On May 9, 2022, Eggers was being held in the Pershing County Jail on a charge of custodial kidnapping.¹ That morning, the district court released him from custody on that charge. However, Eggers was returned to the jail due to an active, no-bail warrant from Humboldt County for other unrelated felony charges. Eggers was made aware that Humboldt County had arranged to transport him the next day to face those charges. On the afternoon of May 9, Eggers asked a jail deputy to release him because he did not want to be transferred to Humboldt County. The deputy explained

¹We recount the facts only as necessary for our disposition. We note that Eggers' opening brief provided a single sentence for the statement of the case and another single sentence for the statement of facts, both of which were insufficient for purposes of NRAP 28. In his statement of the case, Eggers alleged that "[t]he district court's errors during trial and sentencing require a new trial." Cf. NRAP 28(a)(7) (stating that an opening brief must contain "a statement of the case briefly indicating the nature of the case, the course of the proceedings, and the disposition below"). In his statement of facts, Eggers asserted that "[t]he appellant was convicted pursuant to a jury verdict after jury trial." Cf. NRAP 28(a)(8) (stating that an opening brief must contain "a statement of facts relevant to the issues submitted for review with appropriate references to the record").

that he lacked the authority to release Eggers due to the active warrant and Humboldt County's intention to transport him.

That evening, Eggers asked a different deputy if he could go outside to exercise and prepare mop buckets for the following morning. The deputy escorted Eggers to the "sally port," a large fenced-in area topped with barbed wire, and left Eggers there alone for approximately 20 minutes. When the deputy returned, Eggers had disappeared. Jail staff searched the grounds, concluded that Eggers had escaped, and "broadcasted a BOLO (Be On the Look Out)" alert over police radio.

The next day, Eggers was walking along a rural road when a juvenile probation officer recognized him and reported his location. Eggers was arrested shortly thereafter and returned to the Pershing County Jail. The State charged Eggers with one count of escape from custody in violation of NRS 212.090(1)(b).

Prior to trial, Eggers filed a single motion in limine with two requests for relief: to exclude prior bad act evidence related to Eggers' earlier charges, including his Humboldt County charges, and to include an adverse inference instruction related to evidence that had been "lost or destroyed" by the jail.² The district court orally denied both of Eggers' requests.

Trial proceeded, and the parties addressed jury instructions on the second day. The State proposed jury instruction number 23, which stated, "This Court may release a defendant from custody for criminal

²Although Eggers' motion in limine did not clearly identify what evidence had been lost or destroyed, the record indicates that Eggers' motion was related to clothing that was taken when Eggers' was rearrested following his escape.

charges filed in Pershing County. However, this Court lacks the legal authority to release a defendant from jail when the Defendant is being held on a warrant issued by another Court.”³ Eggers objected to jury instruction 23 as an incorrect statement of extradition law, but he did not offer an alternative, nor did he offer any legal authority to support his argument. The district court overruled Eggers’ objection.

Following a two-day jury trial, the jury found Eggers guilty. Eggers appeared for his sentencing hearing, where both parties argued in support of their respective sentencing recommendations. The presentence investigation report indicated zero days of credit for time served, but Eggers challenged this calculation and claimed he was entitled to 106 days. Without announcing Eggers’ sentence, the district court took the matter under advisement. Two weeks later, the court filed Eggers’ judgment of conviction which announced, for the first time, Eggers’ sentence of 48-120 months in prison with zero days’ credit for time served. Eggers timely appealed.

Eggers raises five issues on appeal. He contends that (1) the district court erred when it orally disposed of his motion in limine, without subsequently reducing its ruling to a written order; (2) the court erroneously failed to strike jury instruction 23, which Eggers argues “robbed” him of his theory of defense; (3) the court deprived him of his right to be present at sentencing by taking his sentence under advisement; (4) the court miscalculated his credit for time served; and (5) cumulative error warrants reversal.

³Eggers and the State both mistakenly referenced jury instruction 23 as jury instruction 24 during Eggers’ trial and on appeal.

At the outset, we note that Eggers' opening brief provided only four citations to the record and fails to comply with NRAP 28(a)(10), providing that an appellant's opening brief must contain "contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." In addition, though Eggers raises arguments on appeal related to his motion in limine, jury instructions, and sentencing, Eggers failed to include the pretrial motion, trial transcripts, jury instructions, or sentencing transcripts in his appendix. See NRAP 30(b)(1); (2)(D); (3) (requiring the appellant to provide "all transcripts that are necessary to the" court's review, "[a]ll jury instructions given to which exceptions were taken," "and any other portions of the record essential to determination of issues raised in appellant's appeal"). Nonetheless, because many of the omitted documents were included in the State's four-volume appendix, we will address Eggers' claims on the merits to the extent possible.

First, Eggers argues that the district court erred in orally disposing of his motion in limine without later entering a written order, which he claims also prevented him from challenging the district court's ruling on appeal. Because Eggers did not raise this issue below, this challenge is forfeited. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) ("The failure to preserve an error, even an error that has been deemed structural, forfeits the right to assert it on appeal."). Even if Eggers had not forfeited this claim, he fails to demonstrate that the court erred by orally denying his motion without subsequently entering a written order. In support of his contention, Eggers cites NRS 34.830, NRCP 58(c), and *Rust v. Clark County School District*, 103 Nev. 686, 747 P.2d 1380 (1987). However, NRS 34.830 applies only to writs of habeas corpus, see NRS 34.720

“The provisions of NRS 34.720 to 34.830, inclusive, . . . apply only to petitions for writs of habeas corpus . . .”), and both NRCP 58(c) and *Rust* provide that an oral *judgment* is not appealable until reduced to writing, 103 Nev. at 689, 747 P.2d at 1382. In this case, the judgment being appealed is Eggers’ judgment of conviction, which was properly reduced to writing. Further, Eggers’ claim that he could not appeal from the denial of the motion in limine absent a written order is contrary to statute, which allows any intermediate decision by the district court that is contained in the court record to be appealed from the judgment of conviction. NRS 177.045 (“Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.” (emphasis added)). Therefore, we conclude that Eggers’ contention is without merit.

Second, Eggers argues that jury instruction 23 deprived him of his theory of defense that he subjectively believed he was free to leave the jail because the district court had released Eggers from custody on the custodial kidnapping charge. A defendant is entitled to a jury instruction on their theory of the case upon request, so long as there is some evidence to support it. *Newson v. State*, 136 Nev. 181, 185, 462 P.3d 246, 250 (2020). Eggers objected to the instruction as a misstatement of extradition law but did not argue that the instruction undermined his theory of defense, nor did he ask the district court for an instruction on his subjective belief theory. Because Eggers objected on different grounds than those asserted on appeal, his argument on appeal is forfeited. See *Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (recognizing that, to properly preserve an objection, a defendant must object at trial on the same grounds that they assert on appeal).

In the absence of a properly preserved objection, this court may only review Eggers' claim for plain error. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (explaining plain error permits reversal only if an error, clear from the record, affected the defendant's substantial rights and the defendant showed actual prejudice or a miscarriage of justice). The record shows that Eggers was able to argue his theory regarding his subjective belief to the jury. Thus, Eggers fails to demonstrate actual prejudice or a miscarriage of justice and we conclude that his contention is without merit. *Id.* (holding "the burden is on the defendant to show actual prejudice or a miscarriage of justice").⁴

Third, Eggers argues that he was denied his right to be present for sentencing because the district court took the matter under advisement and announced his sentence for the first time in the judgment of conviction.⁵ "A sentencing hearing is a critical stage of the proceedings and thus a

⁴We note that escape from custody under NRS 212.090 is a general intent, rather than specific intent, offense. *See* NRS 212.090 (criminalizing "[a] prisoner confined in a prison, or being in the lawful custody of an officer or other person, who escapes or attempts to escape from prison or custody, if the prisoner is held on a charge, conviction or sentence"); *see also State v. Davis*, 14 Nev. 439, 447 (1880) (stating that "an intent to escape was necessary, but no other intent was required" (emphasis omitted)).

⁵Eggers does not provide any legal authority that prohibits the district court from taking a sentence under advisement. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Additionally, neither Eggers nor the State provided a transcript of the sentencing hearing on appeal, and in the absence of the necessary record, this court must presume that the missing transcript supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

defendant has the right to be present for sentencing.” *Chaparro v. State*, 137 Nev. 665, 668, 497 P.3d 1187, 1191 (2021) (internal citation omitted). However, “the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.” *United States v. Gagnon*, 470 U.S. 522, 526 (1985) (alteration and internal quotation marks omitted). Because Eggers was physically present at the sentencing hearing, represented by counsel, and permitted to offer evidence and make argument, his right to a fair hearing was not violated. *Cf.* NRS 176.015(1)-(2) (requiring that the court must, among other things, allow defense counsel and defendant to offer and explain their recommended punishment before imposing sentence and thereafter impose sentence “without unreasonable delay”). Insofar as Eggers claims that filing the judgment of conviction was a critical stage of the proceedings, the filing of a document is not a “hearing” where the right to be present attaches. *See Beals v. State*, 106 Nev. 729, 731, 802 P.2d 2, 4 (1990) (defining a critical stage as a “hearing that will affect the substantial rights of the defendant”). Therefore, we conclude that Eggers’ contention is without merit.

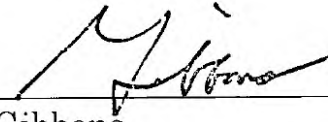
Fourth, Eggers argues that the district court miscalculated his credit for time served and, as a result, Eggers did not receive the proper credit for time he served in presentence confinement. Eggers failed to provide any citations to the record, nor did Eggers provide any authority in support of his claim of error. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); NRAP 28(a)(10). As a result, we are unable to evaluate his claim on the merits.

Fifth, Eggers argues that cumulative error warrants reversal. However, Eggers fails to identify any errors to cumulate, and therefore is


not entitled to relief for cumulative error. *Chaparro*, 137 Nev. at 673-74, 497 P.3d at 1195 ("Because we have rejected Chaparro's assignment of error, we conclude that his allegation of cumulative error lacks merit.").

Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁶


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jim C. Shirley, District Judge
Pershing County Public Defender
Attorney General/Carson City
Pershing County District Attorney
Clerk of the Court/Court Administrator

⁶Insofar as Eggers has raised other arguments that are not specifically addressed in this order, we have considered the same and decline to address them given the lack of record citations or cogent argument. *Maresca*, 103 Nev. at 673, 748 P.2d at 6; NRAP 28(a)(10).