IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOVON MAHJAE LAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85976-COA

ORDER OF AFFIRMANCE

Jovon Mahjae Land appeals from a judgment of conviction, entered pursuant to a guilty plea, of discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; battery resulting in substantial bodily harm; pandering; living from the earnings of a prostitute; and two counts of battery constituting domestic violence. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Land argues (1) the district court abused its discretion when it denied his request to continue the trial, (2) the district court erred by reading one or two victim impact letters prior to sentencing, and (3) his sentence constitutes cruel and unusual punishment. In response, the State argues that Land waived these claims pursuant to the guilty plea agreement, which states that Land unconditionally waived his "right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4)."

23-42175

Land's waiver in his guilty plea agreement is identical to one the supreme court considered in *Aldape v. State*, 139 Nev., Adv. Op. 42, 535 P.3d 1184 (2023). There, the supreme court concluded that the appellant did not waive their right to appeal their "sentence or the probation conditions associated with [their] sentence." *Aldape*, 139 Nev., Adv. Op. 42, 535 P.3d at 1189-90. Accordingly, we agree that Land waived his claim regarding the denial of his request for a continuance, but his remaining claims challenging his sentence are not waived under the guilty plea agreement. Therefore, we consider these claims in turn.

First, Land argues the district court erred by considering one or two letters at the sentencing hearing without determining whether the letters were written by victims or were otherwise relevant and reliable. In particular, Land contends that one of the letters was unsigned, unverified, and of unknown authorship and that it appears the court considered a second letter also of unknown authorship.

The record is unclear as to whether the district court considered the challenged letters.[1] The sentencing judge stated she had read a letter from a purported victim and that Land's objections went to the weight rather than to the admissibility of the letter. However, she did not follow the procedures mandated by the Nevada Supreme Court before considering that letter, *see Aparicio v. State*, 137 Nev. 616, 621, 496 P.3d 592, 597 (2021)

---

[1]We note that it appears the district court received and read only one purported victim impact letter, and that the district court's use of the phrase "another letter" at the beginning of the sentencing hearing was intended to contrast this letter with the letters of support Land submitted with his sentencing memorandum, not with a second victim impact letter.

("When a district court is faced with an objected-to impact statement at sentencing, it is required to determine whether that statement is from an individual who is a 'victim' under Marsy's Law or NRS 176.015(5)(d)," or whether the statement is otherwise relevant and reliable.), and she did not make that letter part of the record but rather placed it in the left-hand side of the file.

Regardless, even if the district court erred by considering the challenged letters, "[t]his court will not vacate a judgment of conviction or sentencing decision unless the error affected the defendant's substantial rights." *Id.* at 620, 496 P.3d at 596; *see also* NRS 178.598. "When determining whether a sentencing error is harmless, reviewing courts look to the record . . . to determine whether the district court would have imposed the same sentence absent the erroneous factor." *Aparicio*, 137 Nev. at 620, 496 P.3d at 596 (internal quotation marks omitted).

Land argues that *Aparicio* requires reversal in this matter. In *Aparicio*, the district court considered approximately 50 purported victim impact letters based on an erroneous interpretation of Marsy's Law. *Id.* at 619, 496 P.3d at 595. The district court stated that it had "read each and every one of them" and that it "accept[ed] everything and considered" them in rendering its sentencing decision. *Id.* at 620, 496 P.3d at 596 (quotation marks omitted). On appeal, the Nevada Supreme Court stated that fewer than five of the letters clearly met the statutory or constitutional definition of a victim, and that the district court's failure to determine "whether each one was from an individual directly and proximately impacted, Nev. Const. art. 1, § 8A(7), fell within NRS 176.015(5)(d), or was relevant and reliable,

NRS 176.015(6)," precluded it from determining that the error was harmless. *Id.* at 621, 496 P.3d at 596-97.

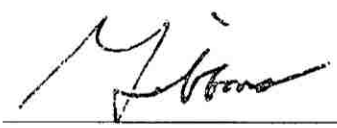
After reviewing the record, we conclude that this matter is distinguishable from *Aparicio* and that the challenged letters did not influence the district court's sentencing decision. Unlike in *Aparicio*, where the district court explicitly stated that it was considering the approximately 50 challenged letters in rendering its sentencing decision, here, the district court did not state that it was considering the one or two challenged letters in rendering its sentencing decision. Although the district court stated it had read one of the challenged letters, it did not make that letter part of the record, and it placed the letter in the left-hand side of the file. The district court also clearly indicated that its sentencing decision was based on the severity of the offenses and the level of violence involved. And the State did not present any argument unique to the letters; rather, it referenced a letter only once and with respect to facts that were independently supported by the record. Therefore, we conclude Land is not entitled to relief on this claim.

Second, Land argues his aggregate sentence of 9 to 24 years in prison constitutes cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict

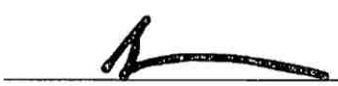
proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Land does not contend that his individual sentences are not within the statutory limits or that the sentencing statutes are unconstitutional. And we conclude the sentences imposed are not grossly disproportionate to the crimes and do not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk