

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CURTIS ELMO JAMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86482-COA

CURTIS ELMO JAMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86483-COA

FILED

FEB 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
JUDGMENT OF CONVICTION*

Curtis Elmo James appeals from a judgment of conviction, pursuant to a guilty plea, of one count of attempted murder in the first degree with the use of a deadly weapon, victim over the age of 60 years. James also appeals from a judgment of conviction, also pursuant to a guilty plea, of two counts of battery by a prisoner and one count of assault on a peace officer (by prisoner). These appeals have been consolidated. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

James was initially charged in Case No. 19-CR-00186 with one count of attempted murder in the first degree with the use of a deadly weapon, victim over the age of 60 years and one count of battery with the use of a deadly weapon, victim over the age of 60 years, causing substantial bodily harm.¹ He was alleged to have stabbed his neighbor, Steven Halvorson, in the back, in Halvorson's front yard. James conditionally waived his preliminary hearing and was ordered to be transported to Lake's

¹We recite the facts only as necessary for our disposition.

Crossing Center to undergo a competency evaluation. However, before he could be transported, James appeared in court for a pretrial hearing, during which he attempted to stab his counsel with a pen and then attacked a court bailiff and a jail deputy. James was subdued with a taser and removed from the courtroom, and the presiding judge stated that James appeared to have a “psychotic break.” As a result of the courtroom attack, James was additionally charged in Case No. 20-CR-00406 with two counts of battery by a prisoner and one count of assault on a peace officer (by prisoner).

During the criminal proceedings, James was transported to Lake’s Crossing Center for competency evaluations a total of four times. The first three times he was deemed competent after being medicated. However, once James was returned to the jail, he would discontinue the medication and regress to incompetence, resulting in his return to Lake’s Crossing. The fourth time James was transported to Lake’s Crossing for a competency evaluation he was found incompetent and committed for restoration.

During his restoration period, the district court held a *Sell*² hearing to authorize the involuntary administration of medication. However, by the time of the hearing, James was taking his medication voluntarily. Following testimony from Dr. Byron Czerniski, James’ treating psychiatrist, the district court entered a conditional *Sell* order authorizing Lake’s Crossing to involuntarily medicate James only if he refused to take his medication. James continued to take his medication voluntarily and it does not appear from the record that the *Sell* order was ever enforced.

James was eventually deemed competent and returned to the district court, where he entered a guilty plea to resolve both of his cases.

²*Sell v. United States*, 539 U.S. 166 (2003).

Pursuant to the terms of the plea, James pleaded guilty but mentally ill to one count of attempted murder in the first degree with the use of a deadly weapon, victim over the age of 60 years, two counts of battery by a prisoner, and one count of assault on a peace officer (by prisoner). In James' first case (Case No. 19-CR-00186), on the attempted murder charge, he was sentenced to a term of 8-20 years in prison, and for the use of a deadly weapon, he received a consecutive sentence of 4-10 years, for an aggregate total of 12-30 years. In James' second case (Case No. 20-CR-00406), for both counts of battery by a prisoner, he received concurrent sentences of 28-72 months, and for the assault on a peace officer (by prisoner), he received a consecutive sentence of 19-48 months, for an aggregate total of 47-120 months.³ The court then ordered the sentences in both cases to run consecutively, for an aggregate total of 191-480 months (15.9-40 years) in prison with 1,510 days credit for time served. James now appeals.

First, James argues that the district court abused its discretion by imposing a sentence in violation of the Eighth Amendment's prohibition against cruel and unusual punishment because his sentence, in light of his mental illness, "was harsh and excessive." He does not dispute that his sentence was within the statutory limits.

³As the State points out in its answering brief, the judgment of conviction for Case No. 20-CR-00406 contains a clerical error in James' aggregate sentence. The sentences for the individual offenses in the judgment of conviction match the district court's actual pronouncement, but the judgment incorrectly lists James' aggregate sentence as 94-240 months instead of 47-120 months. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the court on remand to enter a corrected judgment of conviction listing James' aggregate sentence as 47-120 months.

A district court's sentencing decision is reviewed for an abuse of discretion. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Typically, a sentence that is within the statutory limits is not considered a cruel and unusual punishment. *Id.* However, a statutorily permissible sentence may constitute cruel and unusual punishment in violation of the Eighth Amendment if it is "so unreasonably disproportionate to the offense as to shock the conscience." *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 200, 221-22 (1979); *see also Harmelin v. Michigan*, 501 U.S. 957, 10001 (1991) (Kennedy, J., concurring) (plurality opinion) (explaining that the Eighth Amendment does not require strict proportionality between crime and sentence).

James does not argue that his punishment was disproportionate to his offenses or that it shocks the conscience. Nor does he cogently argue that the district court abused its discretion.⁴ Nonetheless, we conclude that James' sentence does not constitute a cruel and unusual punishment in violation of the Eighth Amendment. Although James' mental illness undoubtedly played a role in his offenses, James' attacks were extremely violent and unprovoked. Further, Halvorson's wife provided a victim impact statement at sentencing that detailed Halvorson's very difficult mental and

⁴James cites to the federal sentencing requirement that a sentence must be "sufficient, but not greater than necessary" to accomplish sentencing goals under 18 U.S.C. § 3553(a). However, James does not provide any authority supporting the application of federal sentencing requirements to this case, and therefore we decline to consider his claim. *See 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).

physical recovery following James' attack.⁵ Under these circumstances, the district court did not abuse its discretion in sentencing James.

Second, James contends that his constitutional due process rights were violated due to the "lack of psychological care for indigent defendants who are incompetent." However, James does not cogently argue how he suffered a constitutional due process violation, and thus we need not consider that argument. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). To the extent that James argues that his delay in being transported to Lake's Crossing constituted a due process violation, he did not raise this issue below or challenge any delay while awaiting transport, and therefore this issue is forfeited. *See 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."); *see also State v. Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d 248, 253-54 (2023) (concluding that the district court abused its discretion by dismissing a criminal complaint because the defendant waited in jail for five months before being transferred to Lake's Crossing, where "on balance, society's interest in prosecuting sexual assault outweigh[ed] any deterrent effect dismissal with prejudice may have had" in the case). Therefore, James is not entitled to relief.




Third, James argues that the State failed to establish the *Sell* factors for involuntary medication by clear and convincing evidence where the State sought to forcibly medicate him for purposes of sentencing rather than for trial. However, James has not established that the *Sell* order was ever enforced. "As a general rule, this court will decline to hear a moot case.

⁵Halvorson had passed away prior to James' sentencing hearing.

That general rule comports with our duty to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.” *Valdez-Jimenez v. Eighth Jud. District Court*, 136 Nev. 155, 158, 460 P.3d 976, 981-82 (2020) (internal quotation marks omitted). Because James does not establish that he was ever forcibly medicated, there is no “actual controversy” regarding the district court’s *Sell* order, and therefore James’ claim is moot.⁶

Accordingly, we

ORDER the judgment of convictions AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction in Case No. 20-CR-00406 as set forth above.⁷

	 _____, C.J. Gibbons	
 _____, J. Bulla		 _____, J. Westbrook

⁶In addition, we also note that any potential defect in the district court’s *Sell* order was harmless. A challenge to an involuntary medication order on direct appeal “focuses upon the right to a fair trial. It asks what *did* happen as a result of having administered the medication.” *Sell*, 539 U.S. at 177. In this case, even if the district court did err in issuing the *Sell* order, we cannot conclude that it had any impact on James’ constitutional rights where James has not established that the order was ever enforced.

⁷Insofar as James has raised any other arguments that are not specifically addressed in this decision, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. John Schlegelmilch, District Judge
Karla K. Butko
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk