IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEE ANTHONY REISINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89024-COA

FILED

MAY 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lee Anthony Reisinger appeals from a judgment of conviction, entered pursuant to a guilty plea, of home invasion while in possession of a firearm or deadly weapon constituting domestic violence and attempted assault with the use of a deadly weapon. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

First, Reisinger argues the district court abused its discretion at sentencing because it relied on suspect evidence. At the beginning of the sentencing hearing, the district court stated that it had read the divorce decree between Reisinger and the victim of his crimes and that it would not consider it unless the divorce decree affected restitution in any way. Reisinger had the opportunity to object to the district court's consideration of the divorce decree but did not; thus, this claim is subject to plain error review. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (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.* "[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.

25-22642

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).

Here, the district court's sentence of 6 to 15 years in prison is within the parameters provided by the relevant statutes.[1] *See* NRS 193.130(2)(c); NRS 193.153(1)(a)(3); NRS 200.471(2)(B); NRS 205.067(4). And Reisinger does not demonstrate the district court relied on impalpable or highly suspect evidence. Specifically, Reisinger fails to demonstrate the divorce decree was suspect nor does he allege what information in the divorce decree was suspect such that the district court should not have considered it. Thus, he fails to demonstrate that the district court plainly erred or that his substantial rights were affected. As a result, we conclude Reisinger is not entitled to relief on this claim.[2]

Second, Reisinger argues the district court abused its discretion by not suspending his sentence and placing him on probation. At

---

[1]Reisinger received a prison sentence of 6 to 15 years for the home invasion count and a concurrent prison sentence of 2 to 6 years for the attempted assault count.

[2]In his reply brief, Reisinger argues oppositely that the district court should have considered the fact that he previously paid a large settlement as stated in the divorce decree. We decline to consider issues raised for the first time in a reply brief. *See LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014); *see also* NRAP 28(c) (stating a reply brief is "limited to answering any new matter set forth in the opposing brief").

sentencing. Reisinger presented evidence that he was 72-years old, had no prior criminal history, had been deemed a low risk to violently reoffend, had been sober for a year, had support from family and friends, and was willing to move out of the area. He also argued his behavior on house arrest was good and showed he was able to be supervised.

The granting of probation in this case was discretionary. *See* NRS 176A.100(1)(c); *Houk*, 103 Nev. at 664, 747 P.2d at 1379. At sentencing, the district court stated it had considered Reisinger's mitigating evidence. However, the district court found that the crime was violent and that Reisinger was trained in firearms and knew better than to engage in the criminal conduct. We conclude the district court did not abuse its discretion by declining to suspend the sentence and place Reisinger on probation. Therefore, we conclude that Reisinger is not entitled to relief on this claim.

Third, based on the arguments presented in his claim regarding probation, Reisinger argues his sentence is excessive and 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).

As noted above, the sentences imposed are within the parameters provided by the relevant statutes, and Reisinger does not allege that those statutes are unconstitutional. Considering the sentence and the

crime, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Therefore, we conclude that Reisinger is not entitled to relief on this claim.

Finally, Reisinger challenges the imposition of house arrest as a condition of bail. Reisinger did not challenge the conditions of bail below, and the entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the plea. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975); *accord Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Further, Reisinger did not preserve the right to raise this issue on appeal in his guilty plea agreement. *See* NRS 174.035(3). Therefore, we decline to consider this claim.[3]

Having concluded that Reisinger is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Karla K. Butko
Roberto Puentes, Esq.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

[3]To the extent Reisinger requests this court to overrule *State v. Second Jud. Dist. Ct. (Jackson)*, 121 Nev. 413, 116 P.3d 834 (2005), and grant him presentence credits for the time served on house arrest, this court cannot overrule supreme court precedent. *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 n.7 (Ct. App. 2023).