IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN FOSTER PERKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52270

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of carrying a concealed weapon. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Ian Foster Perkins to a prison term of 24 to 60 months.

On appeal, Perkins argues that this court should remand his case to the district court to withdraw his plea because the record demonstrates his innocence. He also argues that (1) the district court erred when it permitted victim impact testimony at his sentencing, (2) the district court's bias affected his sentence, and (3) the district court improperly received a victim's opinion as to what sentence Perkins should receive. We conclude that these contentions lack merit for the reasons discussed below.

First, Perkins contends that the record reveals that he was actually innocent of the crime of carrying a concealed weapon and thus his guilty plea is invalid and he should be permitted to withdraw it. He contends that because he used the weapon in self-defense, he was privileged to carry it in a concealed manner.

Generally, challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), superceded by statute as stated in Hart v. State, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000) and holding limited by Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994); see also O'Guinn v. State, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002). Because the record does not indicate that Perkins challenged the validity of his guilty plea in the district court, his claim is not appropriate for review on direct appeal from the judgment of conviction, and, therefore, we need not address it. Bryant, 102 Nev. at 272, 721 P.2d at 368.

Second, Perkins argues that the district court erred in permitting victim impact testimony from Frances Cordova, whose son was killed during an altercation involving Perkins and several other people. Perkins was arrested after police responded to a shooting outside a restaurant. He contends that as the crime was completed when he concealed the weapon and entered the restaurant, the witness' testimony concerning the loss of her son in a later altercation was not relevant.

We afford the district court wide discretion in its sentencing decisions, Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and allow the sentencing court to consider facts that would not be admissible at trial. Todd v. State, 113 Nev. 18, 25, 931 P.2d 721, 725 (1997). Pursuant to NRS 176.015(3)(b), (4)(c), the victim, or parent "of a person who was killed as a direct result of the commission of the crime," may "[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for

restitution." We "will reverse a sentence if it is supported solely by impalpable and highly suspect evidence." Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

We conclude that the district court did not abuse its discretion in admitting Cordova's testimony. As her testimony concerned the effects of the instant crime, she was entitled to present a victim impact statement. See NRS 176.015(3)(b), (4)(c). Regardless, there is no indication that the district court based its decision on Cordova's statement. See Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) ("The district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision."). In particular, the evidence of which Perkins complains—the facts surrounding the shooting—was known to the sentencing court prior to Cordova's testimony. The presentence investigation report described the incident and the prosecution gave further details about the shooting during its argument, before Cordova testified.

Third, Perkins argues that his sentence, if not the result of improper victim impact testimony, was the result of judicial bias. He contends that the district court was biased against him because he was from East Palo Alto, California.

During the plea canvas, the district court made the following statement in the context of explaining the favorable consideration Perkins received from the prosecutor and trial counsel:

> If you grew up in a world in East Palo Alto – and I think you did – where a bunch of crap goes on in our society, and you're involved in it, you will never get the treatment that you received today. Never.

> So you better start thinking about getting the hell out of East Palo Alto, getting the hell out of weapons, getting the hell out of that area, because you will never be treated this way in East Palo Alto. Do you understand me? I grew up in the Bay Area. I understand. Understand?

Perkins did not object to the comment during the plea canvass; therefore, we review this claim for plain error. Berry v. State, 125 Nev. ___, ___, 212 P.3d 1085, 1097 (2009).

The "remarks 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 v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

We conclude that the challenged comments do not reveal improper bias or prejudice. Perkins agreed to plead guilty to carrying a concealed weapon, and, in exchange, the State agreed that, unless presented with new evidence, it would not pursue murder charges in connection with the death of Cordova's son. The essence of the district court's statement was that Perkins benefited from a favorable plea bargain and that it was unlikely that, if he found himself in trouble again, he would receive such consideration a second time. Therefore, we conclude that Perkins failed to demonstrate plain error in this regard.

Fourth, Perkins argues that this court should reverse its decision in Randell, holding that it is permissible for victims to give sentencing recommendations as part of their impact testimony in non-capital cases. Citing cases from other jurisdictions, Perkins asserts that the victim's opinion as to the sentence is not relevant to the district court's determination of his sentence. He further argues that the authority relied

on by this court does not support its conclusion. Lastly, he contends that the decision in Randell did not conclude that it was not error to receive an opinion as to sentence, merely that it was presumed harmless.

Generally, judges may consider facts at sentencing that would not be admissible before a jury. Silks v. State, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976). In accordance with this principle, this court concluded in Randell that the district court did not err in receiving a sentence recommendation from a victim. Randell, 109 Nev. at 7, 846 P.2d at 280. This court has repeatedly re-affirmed this holding. See Gallego v. State, 117 Nev. 348, 370, 23 P.3d 227, 242 (2001); Smith v. State, 112 Nev. 871, 873, 920 P.2d 1002, 1002-03 (1996); Witter v. State, 112 Nev. 908, 922, 921 P.2d 886, 896 (1996), receeded from on other grounds by Byford v. State, 116 Nev. 215, 248 n.11, 994 P.2d 700, 722 n.11 (2000) (Maupin, J., concurring). Given our repeated decisions upholding Randell and Perkins' failure to cite any controlling authority that calls Randell into doubt, we decline the invitation to overrule Randell.

Having considered Perkins' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Richard F. Cornell
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk