

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOHAMED KALAM KAMALAUDEEN,
Kamalaudeen,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53067

FILED

MAY 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder of a person over 60 years of age with the use of a deadly weapon and solicitation to commit murder. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. Appellant Mohamed Kamalaudeen raises three issues on appeal.

First, Kamalaudeen claims that the district court deprived him of due process when it used the wrong standard in admitting eleven photographs of the victim's autopsy. We disagree. Kamalaudeen objected to three of the eleven photographs, and withdrew his objection as to one when it was redacted. While the district court may not have articulated the correct standard verbatim in admitting the two contested images, a review of the record finds that the court did consider the photographs' evidentiary value in assisting the testimony of the medical examiner and thereby found their evidentiary value outweighed the potential for prejudice, see Robins v. State, 106 Nev. 611, 623, 798 P.2d 558, 566 (1990); see also West v. State, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003), and we therefore conclude that the court did not abuse its discretion in admitting them, see Colon v. State, 113 Nev. 484, 491, 938 P.2d 714, 719 (1997). As to the remaining unobjected-to images, the district court likewise

committed no plain error in admitting those. See Higgs v. State, 126 Nev. ___, ___, 222 P.3d 648, 662 (2010).

Second, Kamalaudeen argues that the district court erred when it failed to either sua sponte disqualify the Public Defender's Office from Kamalaudeen's representation after a prosecution witness revealed that he had been represented by that office in a recent, unrelated case or seek Kamalaudeen's waiver of the putative conflict. We see no such error. Despite having been given a witness list one month before trial, Kamalaudeen's counsel was surprised to learn that the witness had been a client of her office. Additionally, she averred to the district court that she knew nothing of the witness, had not used any confidential information in her cross-examination, and recognized no conflict. Kamalaudeen fails to establish that a conflict of interest affected his counsel's performance. See Mickens v. Taylor, 535 U.S. 162, 171 (2002) ("[A]n actual conflict of interest' [means] precisely a conflict that affected counsel's performance—as opposed to a mere theoretical division of loyalties."); cf. Koza v. District Court, 99 Nev. 535, 538-39, 665 P.2d 244, 246 (1983) (concluding that public defender was required to withdraw from representation of defendant where public defender's representation of defendant was adverse to codefendant, whom public defender had represented for six days prior to his retention of private counsel). We therefore conclude that the district court did not err.


Finally, Kamalaudeen alleges error in sentencing. During the penalty phase, the jury heard testimony that he had threatened a former business partner and was the subject of an arrest warrant on murder charges in Canada. Kamalaudeen claims that the district court improperly considered these prior acts in making its sentencing decision. The district court has wide discretion to consider such acts, but must not

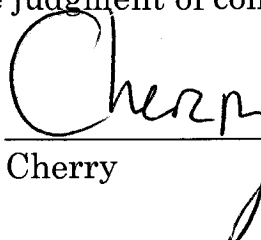
punish a defendant for those acts. Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996). We see no abuse of discretion where the district court considered past acts, but punished Kamaladeen “for all [he] has done in this case.” See Sims v. State, 107 Nev. 438, 440, 814 P.2d 63, 64 (1991).

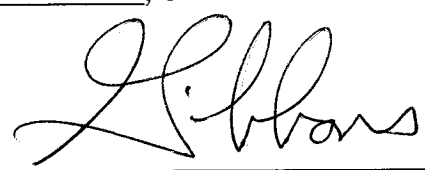
Kamaladeen also asserts that the district court failed to conform to the requirements of NRS 193.165 in determining the length of his sentence under the deadly weapon enhancement. We agree. See NRS 193.165(1); Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 502-03 (2009). However, Kamaladeen did not object during sentencing and fails on appeal to show that the district court’s omissions “had any bearing on [its] sentencing decision,” Mendoza-Lobos, 125 Nev. at ___, 218 P.3d at 508. Consequently, we conclude that Kamaladeen has not demonstrated error affecting his substantial rights. See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

Having considered Kamaladeen’s claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk