

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MICHAEL PELLEGRINI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57596

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *K. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a jury verdict, of burglary, first-degree murder with the use of a deadly weapon, and attempted robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge. Appellant David Pellegrini raises two issues on appeal.

First, Pellegrini argues that the district court erred by excluding statements regarding his alcohol abuse from his allocution. The statutory right of allocution allows a defendant to stand before the sentencing authority and present information in mitigation, including “statements of remorse, apology, chagrin, or plans and hopes for the future.” Homick v. State, 108 Nev. 127, 133, 825 P.2d 600, 604 (1992) (quoting DeAngelo v. Schiedler, 757 P.2d 1355, 1358 (Or. 1988)). Because Pellegrini’s proposed statements involved facts that would be relevant only during the guilt phase and therefore fell outside the scope of allocution, we conclude that the district court did not err in limiting him to the aforementioned considerations.


Second, Pellegrini argues that the prosecutor engaged in misconduct by stating that jurors should not give Pellegrini the chance to see the parole board, asking the jurors to consider the suffering of the


victim's family, arguing that he had not been rehabilitated, and improperly inflaming the jurors' passions. Because Pellegrini failed to object to the challenged statements and they are not of a constitutional dimension, we review for plain error. Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

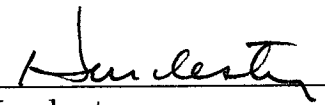
"A prosecutor's comments should be considered in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'" Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 414 (2001) (quoting United States v. Young, 470 U.S. 1, 11 (1985)). Because "a prosecutor's principal objective in penalty phase argument is to convince the jury that the convicted defendant is deserving of the punishment sought," Jones v. State, 113 Nev. 454, 468, 937 P.2d 55, 64 (1997), the prosecutor must necessarily ask the sentencing authority to "consider both the individual characteristics of the defendant and the nature and impact of the crime he committed." Homick, 108 Nev. at 137, 825 P.2d at 606. We conclude that Pellegrini has not demonstrated that the prosecutor erred by arguing that the crime and its impact warranted a sentence of life without the possibility of parole.

Having considered Pellegrini's arguments and concluded that they are without merit, we

ORDER the amended judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Sterling Law, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk