

IN THE SUPREME COURT OF THE STATE OF NEVADA

REYNOLD CHERY-SIMMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58745

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts each of conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge. Appellant Reynold Chery-Simmons raises two issues on appeal.

First, Chery-Simmons contends that the evidence presented at trial was insufficient to support the jury's findings of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979).

Chery-Simmons contends that because his first victim could not identify him either in a photo lineup or at trial, the prosecution presented insufficient evidence. However, Chery-Simmons confessed to robbing the first victim and the first victim testified that his attackers had used a pistol. Chery-Simmons next contends that the evidence from the second robbery established that he was "merely present" and the victim

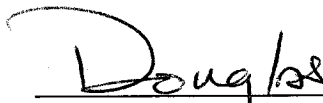
gave him money “to be rid of a nuisance.” The second victim testified that Chery-Simmons demanded her purse and that she surrendered her money to his accomplice because she was “terrified.” Chery-Simmons argues that the evidence surrounding the third victim showed that he was merely present. The third victim testified that he was held at gunpoint by an accomplice while Chery-Simmons pilfered his change. Finally, Chery-Simmons argues that the fourth victim may have incorrectly identified him on the night of the robbery. At trial, the fourth victim explained how a female accomplice assisted Chery-Simmons and the victim identified Chery-Simmons as the individual who robbed him at gunpoint. Further, the jury heard evidence that Chery-Simmons admitted to conspiring with others and committing a string of robberies. Several witnesses identified an accomplice’s car, and one witness provided a partial license plate number which was registered to an accomplice’s stepmother. In each offense, the witnesses explained that Chery-Simmons had acted with an accomplice. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury’s verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).


Second, Chery-Simmons claims that the district court failed to articulate the sentencing factors mandated by NRS 193.165(1) and therefore he must be resentenced. Because Chery-Simmons did not object below, we review this claim for plain error affecting his substantial rights. See Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 507 (2009). The record shows that the district court’s sentencing rationale was based on NRS 193.165(1). Specifically, the district court noted the impact of the

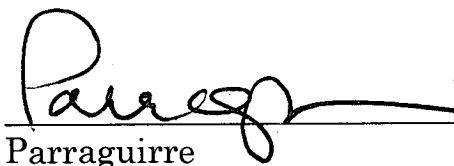
crime on the victims, the particularly senseless nature of the acts, and the potential for violence which these crimes created. The district court also noted Chery-Simmons' mitigating factors, including his clean criminal record and several "thoughtful" letters he submitted. Although the district court did not strictly follow Mendoza-Lobos' mandate, the record provides sufficient justification for the sentence and "the failure to explain that ruling more completely does not render it constitutionally defective." Arizona v. Washington, 434 U.S. 497, 516-17 (1978) (holding that explicit statements regarding a trial court's rationale are desirable but not required). Additionally, we note that Chery-Simmons' sentence is within the statutory limits. See NRS 199.480; NRS 193.165; Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (stating that this court affords the district court wide discretion when a sentence is within the statutory limits). Accordingly, we conclude Chery-Simmons failed to demonstrate plain error.

Having considered Chery-Simmons' contentions and concluding they lack merit we,

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Nancy L. Allf, District Judge
Eichhorn & Hoo LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk