

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK ANTHONY BUSTAMONTE, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59090

**FILED**

**MAR 07 2012**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford<sup>1</sup> plea, of voluntary manslaughter. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

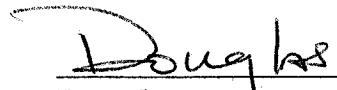
Bustamonte argues that the district court did not exercise its sentencing discretion as evidenced by its failing to articulate the factors in NRS 193.165(1) and merely followed the sentence recommended by the Division of Parole and Probation. We disagree. Because Bustamonte failed to object during sentencing, we will grant relief only if he demonstrates plain error. NRS 178.602; Grey v. State, 124 Nev. 110, 123, 178 P.3d 154, 163 (2008). The record reveals that during the plea canvass, the district court informed Bustamonte that his sentence would be “up to the discretion of the court.” At sentencing, the victim’s sister testified, as did several of Bustamonte’s family and friends. The victim’s sister testified about the impact of the crime on her family. Bustamonte’s friend spoke about his kindness and the help he had given her. After hearing the testimony and argument, the district court noted that Bustamonte and the victim had been friends, an argument ensued, and Bustamonte stabbed

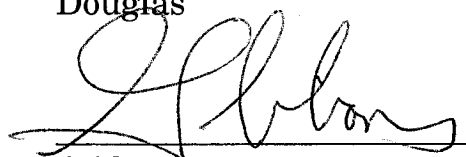
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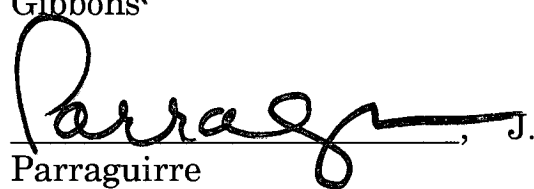
<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

the victim. The district court observed that Bustamonte's criminal history was "not very good." The district court stated that the sentencing recommendation was "reasonable." This statement shows that in the district court's independent judgment the relationship between Bustamonte's weapon use, his criminal history, and the length of the recommended enhancement was appropriate. See Mendoza-Lobos v. State, 125 Nev. 634, 641, 208 P.3d 501, 506 (2009) (stating that the sentence should reflect a "considered relationship" between the defendant and the enhancement). Further, Bustamonte's judgment of conviction states that the district court had considered the factors in NRS 193.165. We conclude that the record demonstrates that the district court exercised its discretion and provides sufficient justification for the sentence imposed. Therefore, Bustamonte failed to demonstrate plain error and we,

ORDER the judgment of conviction AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>2</sup>We decline the State's invitation to overturn or modify Mendoza-Lobos. See Adam v. State, 127 Nev. \_\_\_, \_\_\_, 261 P.3d 1063, 1065 (2011) (stating that there must be compelling reasons for overturning precedent and that those reasons must be weighty and conclusive).

cc: Hon. Steven P. Elliott, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk