

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DIBELLONIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59643

FILED

MAY 09 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 entered pursuant to a guilty plea of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

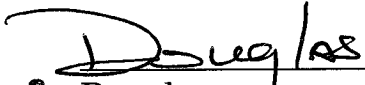
Appellant Anthony Dibellonia contends that the district court violated his constitutional right to have counsel present at all critical stages of his criminal proceeding and his statutory right to have counsel speak on his behalf at sentencing when it failed to give counsel an opportunity to make sentencing recommendations and argue in mitigation. See U.S. Const. amend. VI; NRS 176.015(2)(a); Dzul v. State, 118 Nev. 681, 685, 56 P.3d 875, 878 (2002). However, because Dibellonia failed to preserve this issue for appeal and he has not shown that the error was prejudicial, we conclude that the error is not reversible plain error and Dibellonia is not entitled to relief. See Mendoza-Lobos v. State, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009) (applying plain-error analysis to a sentencing error).


Dibellonia also contends that his 21- to 53-month prison sentence constitutes cruel and usual punishment because it is close to the maximum sentence allowable by law, he did not physically injure the victims, and the victims did not suffer any loss. Because Dibellonia does

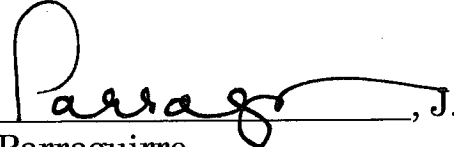
not argue that the relevant statute is unconstitutional, his sentence falls within the parameters of that statute, see NRS 453.3385(1), and we are not convinced that the sentence is unreasonably disproportionate to the gravity of his offense, we conclude that the sentence does not violate the constitutional proscriptions against cruel and unusual punishment, see Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Chavez v. State, 125 Nev. 328, 347-48, 213 P.3d 476, 489-90 (2009).

Having considered Dibellonia's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk