

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL VASQUEZ-ALICEA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67981

DANIEL VASQUEZ-ALICEA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67982 ✓

FILED

OCT 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from two judgments of conviction entered pursuant to guilty pleas of robbery and battery with the use of a deadly weapon causing substantial bodily harm. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Appellant Daniel Vasquez-Alicea claims the district court abused its discretion by imposing his battery sentence to run consecutively to his robbery sentence. Vasquez-Alicea argues the district court failed to follow the legislative intent of NRS 176.035(1), which he claims is to temper the harshness of the historic practice of running subsequent sentences consecutively. And Vasquez-Alicea asserts the consecutive sentence for battery is greater than necessary to accomplish the goals of sentencing.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348; 213 P.3d 476, 490 (2009).

Vasquez-Alicea was sentenced to a prison term of 72 to 180 months for battery and a prison term of 48 to 120 months for robbery: both of these sentences fall within the parameters of the relevant statutes. See NRS 200.380(2); NRS 200.481(2)(e)(2). Vasquez-Alicea has not alleged the court relied solely on impalpable or highly suspect evidence. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And NRS 176.035(1) plainly gives the court discretion to run subsequent sentences consecutively. *Pitmon v. State*, 131 Nev. ___, ___, 352 P.3d 655, 659 (2015). Accordingly, we conclude the district court did not abuse its discretion in this regard.


Vasquez-Alicea also claims the district court abused its discretion by not aggregating the consecutive prison terms as required by NRS 176.035(1).¹ Vasquez-Alicea did not preserve this claim of error for appellate review, so we review for plain error. See *Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507-08 (2009) (applying plain-error review to alleged sentencing errors). “An error is plain if the error is so unmistakable that it reveals itself by a casual inspection of the record. At a minimum, the error must be clear under current law, and, normally, the defendant must show that an error was prejudicial in order to establish that it affected substantial rights.” *Saletta v. State*, 127 Nev. 416, 421, 254 P.3d 111, 114 (2011) (internal quotation marks, brackets, and citations omitted).

¹NRS 176.035(1) provides in relevant part, “For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment pursuant to subsection 2.”).

Here, the record reveals the district court failed to pronounce the minimum and maximum aggregate terms of imprisonment as required by statute. However, because Vasquez-Alicea has not shown the error was prejudicial, we conclude the error is not reversible plain error and Vasquez-Alicea is not entitled to relief. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (“[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice.”).

Having concluded Vasquez-Alicea is not entitled to relief, we ORDER the judgments of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jerome M. Polaha, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk