

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYREE RONALD WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67333

FILED

OCT 20 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of assault with the use of a deadly weapon and discharging a firearm at or into an occupied structure. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

On appeal, appellant Tyree White claims the State committed prosecutorial misconduct at sentencing when it conflated White's actions with those of his co-defendant, mentioned White's gang affiliation, and used arrests to show White had a history of violence. White failed to object to these statements at sentencing.

"Generally, the failure to object to prosecutorial misconduct precludes appellate review." *Rose v. State*, 123 Nev. 194, 208, 163 P.3d 408, 418 (2007). However, we may review the alleged misconduct for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under the plain error standard, we determine "whether there was an error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks and citation omitted). We analyze claims of prosecutorial misconduct in two steps: first, we determine whether the prosecutor's conduct was improper, and second, if

the conduct was improper, we determine whether it warrants reversal. *Valdez*, 124 Nev. at 1188, 196 P.3d at 476.

White failed to demonstrate plain error. Several of the witnesses to the crime testified they heard White and his co-defendant yell out Piru Blood, the name of a gang. Further, White has been previously identified as a Piru Blood by the police and has his moniker, Ree, tattooed on his wrist. This was also noted in his presentence investigation report (PSI). As to mentioning the arrests, the arrests are listed in the PSI and are part of White's record. Further, the State did not conflate White's actions with those of his co-defendant. In fact, the State was careful to delineate who it was talking about when it discussed the actions of the defendants and their criminal histories and backgrounds. Therefore, White is not entitled to relief for this claim.


Next, White claimed the district court abused its discretion by imposing a sentence based on passion and prejudice. Specifically, White is challenging the district court's statement that "[e]very time you close your eyes, you should think about that because what they say is true. You guys had no regard for human life."

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). "[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

White failed to demonstrate the district court abused its discretion because he failed to demonstrate the district court based its sentencing decision on passion and prejudice. First, we note White's consecutive terms of 28 to 72 months are within the parameters provided by the relevant statutes. See NRS 176.035(1); NRS 200.471(2)(b); NRS 202.285(1)(b). The district court heard mitigation argument, testimony from the victims, and considered the facts of the case. While White's criminal history was minimal, the facts of the case and the impact on the victims was very serious. White and his co-defendant attempted to enter an apartment building. His co-defendant opened a window and attempted to pull one of the occupants out of the window. That was unsuccessful. White then stuck a gun through the same window and pointed it at a different occupant. He then discharged the gun through window, but did not injure anyone. A neighbor came out of his apartment and White's co-defendant shot him. The neighbor is now paralyzed and is confined to a wheelchair. Based on the above, we conclude White is not entitled to relief for this claim, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk