IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAYSEN ALEXANDER PATTERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68043

FILED

OCT 19 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 first degree arson and three counts of burglary while in possession of a firearm. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Sentencing comments

Appellant Jaysen Patterson claims the district court abused its discretion at sentencing by reading the presentence investigation report's description of his tattoos and concluding they appear to show he is a sociopath. Quoting from *Norwood v. State*, 112 Nev. 436, 440, 915 P.2d 277, 279 (1996), Patterson argues the court's "declaration that [he] was a sociopath was made 'not with reliance on highly dubious or inflammatory evidence, but without reliance on *any* supporting evidence whatsoever.'"

The record belies Patterson's argument. It shows the district court received evidence that Patterson repetitively burglarized cars and garages without concern for the victims. During one of his burglaries,

Patterson set the Drew Family's garage on fire with an accelerant he had brought for that purpose. Patterson knew, by the time of night and the presence of vehicles in the driveway and garage, there were people asleep inside the house. But he did nothing to warn these people of the impending danger. Gary Drew stated that Patterson "is a selfish, inconsiderate person who didn't care about the consequences of his actions. In essence, a sociopath. And I believe if he isn't locked up for a considerable length of time, he will eventually escalate his actions until he does kill someone." The court apparently agreed.

Patterson has not demonstrated the district court relied solely upon impalpable evidence, *see Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284. 286 (1996), closed its mind to the presentation of all evidence, *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998), or refused to consider mitigating evidence, *see Wilson v. State*, 105 Nev. 110, 115, 771 P.2d 583, 586 (1989). Accordingly, Patterson has not demonstrated the court abused its discretion in this regard. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009).

Consecutive sentences

Patterson claims the district court abused its discretion at sentencing by imposing consecutive sentences. Patterson 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 Patterson asserts the

consecutive sentences are greater than necessary to accomplish general sentencing goals.

Patterson was sentenced to four consecutive prison terms of 72 to 180 months. All of these prison terms fall within the parameters of the relevant statutes, *see* NRS 205.010; NRS 205.060(4), 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, Patterson has not demonstrated the court abused its discretion in this regard. *See Chavez*, 125 Nev. at 348, 213 P.3d at 490.

Aggregating consecutive sentences

Patterson claims the district court committed plain error by not aggregating the consecutive prison terms as required by NRS 176.035(1).[1] "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). The record reveals the district court failed to pronounce the minimum and

[1]NRS 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.").

maximum aggregate terms of imprisonment as required by statute. However, Patterson has not shown the error was prejudicial and we conclude the error is not reversible plain error. *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 Patterson is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk