IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELLIOTT BART BIDNICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68707

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of three counts of possession of visual presentation depicting sexual conduct of a child. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Elliott Bart Bidnick first argues the district court erred by failing to order a new psychosexual evaluation when the court noted the evaluation did not consider a report regarding Bidnick's prior arrest. Bidnick failed to object to the psychosexual evaluation before the district court, and thus, no relief is warranted absent a demonstration of plain error. *See Dieudonne v. State*, 127 Nev. 1, 4-5, 245 P.3d 1202, 1204-05 (2011). "In conducting plain error review, we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Id.* at 5, 245 P.3d at 1205 (internal quotation marks omitted).

Our review of the record reveals Bidnick does not demonstrate plain error in this regard. NRS 176.139(4) states the psychosexual evaluation may include a review of information regarding a defendant's prior criminal offense, but it does not mandate review of such information. *See Blackburn v. State*, 129 Nev. ___, ___, 294 P.3d 422, 426 (2013) (noting

"NRS 176.139(4) sets forth what the [psychosexual] evaluation *may* include"). Here, the district court observed the evaluation did not consider Bidnick's prior arrest report, but noted the evaluation still concluded Bidnick was a moderate to high risk to reoffend. As the psychosexual evaluation is not required to include a review of Bidnick's prior criminal activities, Bidnick does not demonstrate error affecting his substantial rights. Therefore, Bidnick is not entitled to relief for this claim.

Second, Bidnick argues his conviction for this matter violates the Double Jeopardy Clause because the same conduct caused his probation to be revoked in a separate case. This claim is without merit. "A claim that a conviction violates the Double Jeopardy Clause generally is subject to de novo review on appeal." *Davidson v. State*, 124 Nev. 892, 896, 192 P.3d 1185, 1189 (2008). The Double Jeopardy Clause protects a defendant from both successive prosecutions and multiple punishments for the same criminal offense. U.S. Const. amend. V; *United States v. Dixon*, 509 U.S. 688, 695-96 (1993). However, the Double Jeopardy Clause is not implicated here because the probation revocation was merely the reinstatement of Bidnick's original sentence for the underlying crime, and was not punishment for the conduct that led to the probation revocation. *See U.S. v. Brown*, 59 F.3d 102, 104-05 (9th Cir. 1995). Therefore, Bidnick is not entitled to relief for this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk