

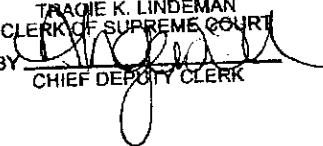
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN G. DELCID-CRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68992

FILED

JUL 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of leaving the scene of an accident. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

First, appellant Juan Delcid-Cruz claims the State breached the guilty plea agreement during sentencing. Delcid-Cruz argues (1) the spirit of the negotiations included the possibility of his deportation and absence from sentencing, (2) his failure to appear at sentencing was uncontrollable and did not give the State the right to argue at sentencing, and (3) he could not have reasonably understood when he entered into plea negotiations that the State would regain the right to argue at sentencing if he was deported. Delcid-Cruz did not preserve this claim for appeal.

We review unpreserved allegations that the State breached a plea agreement for plain error. *Sullivan v. State*, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999); *see also Hanley v. State*, 97 Nev. 130, 137, 624 P.2d 1387, 1391 (1981) (concluding defendant's failure to object to an alleged plea bargain violation during the sentencing hearing waived appellate review of the claim), *abrogated on other grounds as stated in*


Woods v. State, 114 Nev. 468, 475-76, 958 P.2d 91, 96 (1998). “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 does not reveal the alleged error. It does not suggest the spirit of the parties’ negotiations embraced the possibility of deportation and absence from sentencing. Nor does it indicate the failure-to-appear clause would not apply if Delcid-Cruz’s failure to appear was due to reasons beyond his control. Instead, it demonstrates that Delcid-Cruz knew the State would regain the right to argue for a lawful sentence if he failed to appear at sentencing. *See Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (observing that a defendant who signs a written plea agreement with a failure-to-appear clause “should have reasonably expected that his failure to appear at the first sentencing . . . would cause the State to invoke the right to argue”). Accordingly, Delcid-Cruz has not demonstrated plain error in this regard.

Second, Delcid-Cruz claims the district court improperly considered his nationality or ethnicity during sentencing. Relying upon *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998), Delcid-Cruz argues his sentence must be vacated and his case remanded for resentencing before a different judge because the record does not satisfy the appearance of justice. Delcid-Cruz did not preserve this claim for appeal.

We review unpreserved allegations that the district court erred at sentencing for plain error. *Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507-08 (2009). Here, the record does not reveal the alleged error. The district court did not comment on Delcid-Cruz's nationality or immigration status at sentencing, and none of the district court's actions during the proceeding give rise to an appearance that Delcid-Cruz's nationality or ethnicity adversely affected its sentencing determination. *See Martinez*, 114 Nev. at 738, 961 P.3d at 145-46. Accordingly, Delcid-Cruz has not demonstrated plain error in this regard.

Having concluded Delcid-Cruz is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk