IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN JAMES MCNALLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71816

FILED

SEP 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven James McNally appeals from a judgment of conviction entered pursuant to a guilty plea of possession of a controlled substance with the intent to sell. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

First, McNally claims he was deprived of a fair sentencing hearing due to prosecutorial misconduct. McNally argues the prosecutor made erroneous and inflammatory remarks about his arrests on a bench warrant and in a new case, the benefit he received when another case was dismissed, and the "numerous bench warrants" issued for his failures to appear in this case. However, McNally did not object to the prosecutor's remarks and he has not demonstrated plain error because there was no error: the prosecutor was merely arguing for the punishment she thought was appropriate. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims of prosecutorial misconduct for plain error).

Second, McNally claims the district court abused its discretion by imposing a sentence based on prejudice and passion.[1] McNally argues the district court's comments indicate he was being punished for unproven prior crimes and uncharged crimes. 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). McNally's 14- to 36-month prison term falls within the parameters of the relevant statutes. *See* NRS 193.130(2)(d); NRS 453.337(2)(d). The record does not suggest the district court's sentencing decision was based on impalpable or highly suspect evidence. *See Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). We conclude the district court merely commented on why it disagreed with McNally's sentencing argument and therefore McNally has not demonstrated the district court abused its discretion at sentencing.

To the extent McNally also claims his 14- to 36-month prison sentence constitutes cruel and unusual punishment, we conclude his claim lacks merit. *See* NRS 193.130(2)(d); NRS 453.337(2)(a); *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion); *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (observing that "[a] sentence within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience" (internal quotation marks omitted)).

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[1]The Honorable Douglas E. Smith presided over the sentencing hearing.

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

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

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