

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONNIE DION EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72500

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronnie Dion Edwards appeals, pursuant to NRAP 4(c), from a judgment of conviction, entered pursuant to a guilty plea, of battery constituting domestic violence. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

First, Edwards argues the State violated the plea agreement when it argued Edwards should be sentenced under the habitual criminal statute. Specifically, Edwards claims there was no credible evidence he violated the terms of the plea agreement regarding having contact with the victim or he had new charges which would allow the State to seek sentencing under the habitual criminal statute. He also argued the State should have waited for the district court to make a determination as to whether Edwards had contact with the victim or he had new charges before seeking sentencing under the habitual criminal statute.

Edwards did not argue the State breached the plea agreement at sentencing, therefore he would not be entitled to relief absent a demonstration of plain error. *Sullivan v. State*, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999). In conducting plain error analysis, we must determine whether there was error and whether the error was plain from

18-900674

the record. See *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). “[A]n error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice.” *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (internal quotation marks omitted).

The plea agreement in this case provided the State would stipulate to a sentence of 12 to 30 months in prison, but, if Edwards failed to stay out of trouble, failed to stay away from the victims, failed to appear at parole or probation, or failed to appear at rendition of sentence, the State regained the full right to argue, including for treatment under the habitual criminal statute. The guilty plea agreement also contained a paragraph stating if Edwards failed to interview with the Department of Parole and Probation, failed to appear at any subsequent hearing, or if an independent magistrate, by affidavit review, confirmed probable cause against him for new criminal charges, the State would have an unqualified right to argue for any legal sentence.

After pleading guilty, Edwards was released from jail. Within a week of being released, Edwards was arrested for an alleged domestic violence incidence against one of the victims in the instant case. Edwards waived his preliminary hearing in that case. Ultimately, the charge was dismissed without prejudice because the State was unable to secure the victim’s presence at trial.

Edwards failed to demonstrate plain error. Edwards failed to demonstrate the State breached the plea agreement by arguing for sentencing under the habitual criminal statute. Edwards had contact with the victim, failed to stay out of trouble, and was charged with a new crime.

Further, there was no requirement in the plea agreement that the State had to seek permission from the district court before arguing for habitual criminal adjudication. The parties were free to argue and the district court agreed with the State that Edwards violated the abovementioned requirements in the plea agreement. Therefore, Edwards fails to demonstrate he is entitled to relief on this claim.

Second, Edwards argues the district court abused its discretion by sentencing him under the small habitual criminal statute because there was no evidence to prove he had contact with the victim. 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).

As stated above, there was evidence Edwards had contact with the victim, had failed to stay out of trouble, and had received a new criminal charge. Therefore, the district court did not rely on information or accusations founded on facts supported only by impalpable or highly suspect evidence. Further, Edwards’s sentence of 60 to 150 months fell within the parameters provided by the relevant statute. See NRS 207.010(1). Accordingly, the district court did not abuse its discretion when it sentenced Edwards pursuant to the habitual criminal statute.

Third, Edwards argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. In his motion, Edwards claimed he was pressured into pleading guilty because the State sought a continuance of his trial and this continuance would

negatively affect his ability to regain custody of his son from child protective services. Edwards was in jail at the time the State sought the continuance and the guilty plea agreement allowed him to be released on his own recognizance pending sentencing.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). The Nevada Supreme Court has disavowed the standard previously announced in *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001), which focused exclusively on whether the plea was knowingly, voluntarily, and intelligently made, and affirmed “the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just.” *Stevenson*, 131 Nev. at ___, 354 P.3d at 1281.

Edwards filed his motion prior to the Nevada Supreme Court’s decision in *Stevenson*, and therefore the district court did not rely on *Stevenson* when denying the motion. Nevertheless, we conclude the district court reached the correct result when denying the presentence motion to withdraw guilty plea. The district court found, after reviewing the pleadings, arguments of counsel, and the court record, under the totality of the circumstances, Edwards failed to demonstrate his plea should have been withdrawn. The district court found the plea was freely and voluntarily entered into, Edwards understood what he was pleading guilty to, he understood the canvass, and he evaluated the risks and benefits of taking the deal and decided to plead guilty. The district court also found Edwards made the decision, in light of the custody issue, that he wanted to

take the plea and accept the consequences that go with the deal to get what he wanted.

The record demonstrates, and the findings by the district court support a conclusion, that Edwards failed to demonstrate a fair and just reason to withdraw his plea. Therefore, we conclude the district court did not abuse its discretion by denying the presentence motion to withdraw the guilty plea.

Finally, Edwards argues the district court abused its discretion by denying his motion to dismiss counsel. He claimed he and counsel had a conflict of interest because counsel would not raise all of his claims in his presentence motion to withdraw his plea. He further claimed his counsel related incorrect information regarding his right to appeal the issues that were not raised in his presentence motion to withdraw his plea, and counsel failed to provide him with his discovery.

The district court held a hearing on the motion to dismiss and found counsel was not ineffective, there was no actual conflict between Edwards and counsel, and counsel had the right to determine what issues to raise in the presentence motion to withdraw the plea. Accordingly, the district court denied the motion to dismiss.

Substantial evidence supports the decision of the district court. Edwards was not entitled to the counsel of his choice, *see Thomas v. State*, 94 Nev. 605, 607-08, 584 P.2d 674, 676 (1978), and counsel is not ineffective for failing to raise futile claims in a motion, *see Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Edwards alleged at the hearing he needed his discovery to attack the charges against him; however, counsel was appointed to represent Edwards post-plea, and counsel's representation was limited to the presentence motion to withdraw the plea and sentencing.

Finally, as to Edwards' claim counsel gave incorrect legal advice regarding being able to raise his other plea withdrawal claims on appeal, Edwards failed to demonstrate this incorrect advice required dismissal of counsel. Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Karen A. Connolly, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Jerome T. Tao did not participate in the decision in this matter.