IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMUEL CHRISTIAN TERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71368

ORDER OF AFFIRMANCE

Samuel Christian Terry appeals from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit possession of a stolen vehicle, two counts of possession of a stolen vehicle, three counts of burglary, possession of burglary tools, and theft. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

First, Terry argues the district court erred by adjudicating him a habitual criminal because he entered an oral guilty plea without a written plea agreement. Terry asserts former NRS 174.035(7) required a written plea agreement when the maximum possible prison sentence is greater than ten years, *see* 2015 Nev. Stat., ch. 329, § 1, at 1796, and, because this matter did not have a written plea agreement, the district court was not permitted to sentence Terry to serve more than ten years in prison.

The record reveals Terry informed the district court a written plea agreement was not necessary in this matter and did not argue the district court was barred from imposing a sentence under the habitual criminal enhancement due to the lack of a written plea agreement. Thus, Terry is not entitled to relief absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). "In conducting plain error review, we must examine whether there was error,

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whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

A written guilty plea agreement was not required in this case because Terry's guilty plea was not entered pursuant to a plea bargain, *cf.* 2015 Nev. Stat., ch. 329, § 1, at 1796 (requiring plea bargain to be set forth in writing and signed by a defendant when the defendant enters a plea of guilty pursuant to a plea bargain for felonies carrying certain punishments), and Terry's oral guilty plea did not limit the district court's authority to sentence Terry under the habitual criminal enhancement. Further, the district court canvassed Terry regarding the possible sentences, including the range of sentences under the habitual criminal enhancement, *see* 2015 Nev. Stat., ch. 329, § 1, at 1796; NRS 207.010(1)(b), and Terry asserted he understood the potential penalties and wished to enter a guilty plea. Thus, we do not believe the district court committed plain error in this case because Terry was fully advised and he verbally told the district court that he understood the potential punishments if the court chose to sentence him pursuant to the habitual criminal enhancement statute.

Second, Terry argues the State committed prosecutorial misconduct at the sentencing hearing by making inflammatory arguments regarding Terry's criminal history. Terry did not object to the State's sentencing arguments and thus, Terry is not entitled to relief absent a demonstration of plain error. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477.

We have reviewed the prosecutor's statements and conclude they do not constitute misconduct. The State noted Terry's significant criminal history and argued Terry's history of recidivism warranted a life sentence. Given the facts of this case, Terry does not demonstrate the State attempted to induce the court to sentence him "under the influence of

passion." *Hollaway v. State*, 116 Nev. 732, 742, 6 P.3d 987, 994 (2000), *overruled on other grounds by Lisle v. State*, 131 Nev. ___, ___ n.5, 351 P.3d 725, 733 n.5 (2015). Therefore, we conclude no relief is warranted.

Third, Terry appears to argue the district court abused its discretion by imposing a sentence based upon passion and prejudice against him. We review a district court's sentencing decision for abuse of discretion. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). We "will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

Our review of the record reveals the district court did not base its sentencing decision on impalpable or highly suspect evidence. The district court heard the State's arguments, Terry's mitigation arguments, and concluded concurrent terms of life in prison with the possibility of parole in ten years was the appropriate sentence because it viewed Terry as a danger to the community. Terry's aggregate sentence of life with the possibility of parole fell within the parameters of the relevant statute. *See* NRS 207.010(1)(b)(2). Given the record in this case, Terry does not demonstrate the district court abused its discretion when imposing sentence.

Fourth, Terry argues he is entitled to relief due to cumulative error. However, because Terry fails to demonstrate any error, we conclude he is not entitled to relief due to cumulative error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Susan Johnson, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk