

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENTRELL ALISHAWUAN JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71975

**FILED**

DEC 29 2017

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

*ORDER OF AFFIRMANCE*

Kentrell Alishawuan Johnson appeals from a judgment of conviction entered pursuant to a guilty plea of burglary. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, Johnson argues the State committed prosecutorial misconduct at the sentencing hearing. Johnson appears to argue the State improperly asserted Johnson was a gang member. Johnson did not object to this issue during the sentencing hearing, and thus, Johnson has the burden to demonstrate plain error. *Browning v. State*, 124 Nev. 517, 533, 188 P.3d 60, 71 (2008). "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." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted). Under plain error review, the defendant has the burden to demonstrate the error affected his substantial rights by causing "actual prejudice or a miscarriage of justice." *Id.*

We conclude Johnson fails to demonstrate error affecting his substantial rights. During the sentencing hearing, the State asserted the presentence investigation report (PSI) stated Johnson was a member of a street gang. Shortly after, defense counsel explained the PSI actually listed

Johnson as an affiliate of a street gang, not a member. When the district court imposed sentence, it did not mention Johnson's alleged gang affiliation, but rather stated it imposed sentence because Johnson "violated the sanctity of a home" when committing the crime. Under these circumstances, we conclude Johnson fails to meet his burden to show he suffers from actual prejudice or a miscarriage of justice.


Second, Johnson argues the district court erred by admitting improper victim impact testimony. Johnson asserts a victim improperly addressed the impact Johnson's offense had on the neighborhood rather than simply addressing the personal impact of the crime. Johnson did not object to this issue during the sentencing hearing, and thus, Johnson has the burden to demonstrate plain error. *See Browning*, 124 Nev. at 533, 188 P.3d at 71. Pursuant to NRS 176.015(3)(b) victims may "[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution." During the sentencing hearing, a victim stated the burglary caused him to be uncomfortable in his own home and people in the entire neighborhood to be paranoid. Johnson fails to demonstrate this testimony did not amount to a reasonable view concerning his crime. Johnson also fails to demonstrate admission of this testimony constituted actual prejudice or a miscarriage of justice. *See Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (stating a "district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision.").


Third, Johnson argues the district court abused its discretion at sentencing because it imposed a sentence that was based upon prejudice and passion. Johnson also asserts the district court improperly did not articulate what aggravating and mitigating factors it considered when reaching its sentencing decision.

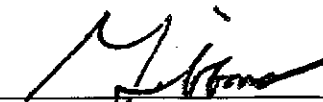
We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). We will not interfere with the sentence imposed by the district court "[s]o long as the record does not demonstrate prejudice resulting from consideration of information 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).

A 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 arguments of counsel and information regarding the defendant's actions in committing the burglary, his criminal history prior to this matter, and his apology to the victims. The district court noted Johnson went into a residence and violated the sanctity of a home, then announced a prison term of 38 to 96 months was the appropriate sentence in this matter. The sentence was within the parameters of the relevant statute. *See* NRS 205.060(2). Johnson does not demonstrate the district court was required to articulate what aggravating and mitigating factors it relied upon when it imposed sentence in this matter. We conclude the district court did not abuse its discretion when imposing sentence.

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

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

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