

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVAUN QUINNTIN LEE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73099

FILED

JUN 13 2018

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

ORDER OF AFFIRMANCE

Devaun Quintin Lee Johnson appeals from a judgment of conviction entered pursuant to a guilty plea of robbery with the use of a deadly weapon. Seventh Judicial District Court, Lincoln County; Gary Fairman, Judge.

First, Johnson argues the district court erred by admitting unsworn victim impact testimony during the sentencing hearing. Johnson asserts, as a result of this error, the victim improperly testified Johnson knew her and her nephew, and Johnson was the mastermind behind the crime. Johnson did not object to the admission of this victim impact testimony, and thus, he is not entitled to relief absent a demonstration of plain error. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009) (reviewing unpreserved allegations the district court erred at sentencing for plain error). “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).

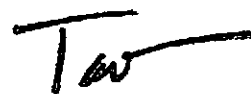
When a witness gives an oral victim impact statement at the sentencing hearing, the victim must be sworn before testifying and the district court erred by failing to do so in this case. *See Buschauer v. State*, 106 Nev. 890, 893, 804 P.2d 1046, 1048 (1990). However, the victim's statements concerning Johnson's involvement and planning of this crime were duplicative of information contained in the police reports and the presentence investigation report, which were properly before the district court when it imposed sentence. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (noting "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence" and "[p]ossession of the fullest information possible concerning a defendant's life and characteristics is essential" when imposing sentence). Therefore, we conclude Johnson fails to demonstrate admission of the unsworn victim impact statement amounted to error affecting his substantial rights. *See Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) ("The 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.").

Second, Johnson argues the district court abused its discretion at sentencing because the district court mistakenly believed Johnson was the mastermind behind the crime. 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).

The record reveals the district court listened to the arguments of the parties and the victim impact testimony. The district court reviewed the facts of the case and stated the evidence showed Johnson must have initiated the crime because he worked for the victims and that was the only way the codefendants could have decided to commit a robbery in such a remote community. The district court concluded a sentence totaling 60 to 188 months in prison was the appropriate sentence, which falls within the parameters provided by the relevant statutes. See NRS 176.035(1); NRS 193.165(1); NRS 200.380(2). Given the record before this court, Johnson fails to demonstrate the district court relied upon impalpable or highly suspect evidence when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Gary Fairman, District Judge
Kelly C. Brown
Attorney General/Carson City
Lincoln County District Attorney
Lincoln County Clerk