IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES BUDDY FLARIDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74639

ORDER OF AFFIRMANCE

Charles Buddy Flarida appeals from a judgment of conviction, pursuant to a jury verdict, of burglary with a deadly weapon, attempted murder with a deadly weapon, and battery with a deadly weapon causing substantial bodily harm. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Flarida stabbed his friend, Steven Breen, six times after seeing a sexually-suggestive text message between Steven and Flarida's girlfriend. The State thereafter charged Flarida with burglary with a deadly weapon, attempted murder with a deadly weapon, and battery with a deadly weapon causing substantial bodily harm. A jury found Flarida guilty on all three counts, and the district court sentenced him to 234 to 660 months in prison, in the aggregate, including additional time for the deadly weapon enhancement on his attempted murder conviction.[1]

On appeal, Flarida argues that remand or reversal is warranted because the district court did not (1) sua sponte give a willfulness instruction on attempted murder, or (2) articulate factual findings on the record under NRS 193.165(1) at his sentencing hearing. We disagree.

[1]We do not recount the facts except as necessary to our disposition.

First, Flarida argues that the district court should have provided a *Robey*[2] instruction to define the word "willful" on the attempted murder charge. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). But if the appellant did not object to an instruction below, we review the district court's decision for plain error. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). Under plain error review, we consider "whether there was 'error,' whether the error was 'plain' or clear, and whether the error affected the defendant's substantial rights." *Id.*

Flarida does not argue that the attempted murder jury instruction was a misstatement of law, but instead argues that the district court should have provided an additional instruction for "willful" sua sponte. Therefore, *Robey v. State*, does not control here. In that case, the district court gave a willfulness instruction that incorrectly stated the law, and the supreme court provided the correct definition for willfulness under NRS 204.030(1)(c). *Robey v State*, 96 Nev. 459, 460-62, 611 P.2d 209, 210-11 (1980) *distinguished by Jenkins v. State*, 110 Nev. 865, 870, 877 P.2d 1063, 1066 (1994) (where willful is defined as a general intent to do the act in child abuse cases). Moreover, there is no statute or case law that mandates the district court use a *Robey* instruction to define "willful" in conjunction with an instruction on attempted murder, especially where the

[2]*Robey v. State*, 96 Nev. 459, 461, 611 P.2d 209, 210 (1980) (willful means "an act or omission which is done intentionally, deliberately or designedly, as distinguished from an act or omission done accidentally, inadvertently, or innocently.").

instruction used at trial already instructed the jury to consider whether the act was intentional.

Here, there was no error because using the *Robey* instruction would not have changed either the jury instruction or its effect. "Willful," under *Robey*, is defined as an intentional act. *Id.* at 461, 611 P.2d 210. In this case, the attempted murder jury instruction used at trial explained that the jury must find that Flarida had the intent to kill. Therefore, the district court did not err in not providing a jury instruction that defined the word "willful."

Next, Flarida argues that this court should reverse his sentence because the district court failed to state on the record that it considered the factors identified in NRS 193.165(1) when it imposed the sentence for the deadly weapon enhancement. Because Flarida did not object during sentencing, we review for plain error. *Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009).

NRS 193.165(1) requires district courts imposing a sentence for a deadly weapon enhancement to articulate factual findings concerning: "(a) [t]he facts and circumstances of the crime; (b) [t]he criminal history of the person; (c) [t]he impact of the crime on any victim; (d) [a]ny mitigating factors presented by the person; and (e) [a]ny other relevant information." The district court must state on the record that it has considered these factors in determining the length of the additional penalty imposed. *Mendoza-Lobos*, at 645, 218 P.3d at 508; NRS 193.165(1).

Here, the district court failed to articulate detailed findings on the record regarding each NRS. 193.165(1) factor, or state that it considered those factors in determining the enhanced sentence. However, we conclude Flarida fails to demonstrate plain error here. It is clear from the record that

the district court considered each required factor. The court heard all of the testimony at trial involving the facts and circumstances of the crime, and also listened to the parties' arguments at sentencing. In mitigation, three witnesses spoke on behalf of Flarida. The victim and his brother explained how Flarida's attack has impacted the victim's life. And, the district court articulated Flarida's prior criminal history on the record. Therefore, the record reveals that the district court's failure to articulate detailed findings does not require reversal. Accordingly, because we conclude the error did not affect Flarida's substantial rights, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Scott N. Freeman, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk