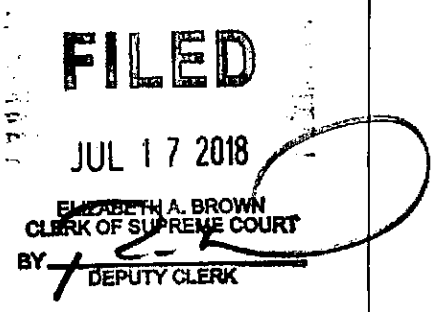
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MURRY SCOTT MCKINLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73329



ORDER OF AFFIRMANCE

Murry Scott McKinley appeals from a judgment of conviction entered pursuant to a guilty plea of uttering a forged instrument. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

McKinley claims the State breached the spirit of the parties' plea agreement at sentencing by arguing that he did not deserve the sentence the State agreed to recommend. McKinley did not preserve this claim for appeal.

We review unpreserved allegations that the State breached a plea agreement for plain error. *Sullivan v. State,* 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999). "An error is plain if the error is so unmistakable that it reveals itself by a casual inspection of the record. At a minimum, the error must be clear under current law, and, normally, the defendant must show that an error was prejudicial in order to establish that it affected substantial rights." *Saletta v. State,* 127 Nev. 416, 421, 254 P.3d 111, 114 (2011) (internal quotation marks, brackets, and citations omitted).

The record reveals the State was "free to argue for an appropriate sentence" but agreed to recommend a sentence of "no more than

18-901521

5-18 years in the Nevada Department of Corrections." At sentencing, the State argued

> The State is free to argue for an appropriate sentence; but will cap [its] argument at five to 18 years on Count II, which is the Habitual Criminal adjudication. The State reached this agreement really for one reason. And it is Mr. McKinley's diagnosis of cancer. I was told by Ms. Roberts, Mr. McKinley's got a certain amount of time left. Just lower the bottom end as much as you can so he can have some time left after prison. To be frank, that was it. Mr. McKinley doesn't deserve that, based on his record. He's got 31 prior convictions, 11 of which are felonies, and here we are on felony number 12 and 13 if you consider Count II, and his 33rd conviction. Right? And the whole purpose of the habitual criminal statute is to increase sanctions for the recidivist, that's who Mr. McKinley is, and to discourage repeat offenders from committing further [offenses]. And so I think five to 18 years accomplishes those goals.

Because the State's argument appears to be reasonably consistent with its sentencing recommendation, *see Sullivan*, 115 Nev. at 389, 990 P.2d at 1262, and McKinley's failure to object suggests he believed it was consistent with the parties' guilty plea agreement, *see id.* at 387 n.3, 990 P.2d at 1260 n.3, we conclude McKinley has not demonstrated plain error.

McKinley also claims the district court abused its discretion by adjudicating him a habitual criminal because some of his prior convictions were stale and for nonviolent offenses. The district court based its habitual criminal adjudication on the six felony convictions McKinley received between 2000 and 2012. We note that "NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of [prior] convictions." *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). And we conclude the district court did not abuse its discretion by

adjudicating McKinley a habitual criminal. *See* NRS 207.010(1)(a); *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009).

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

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Scott N. Freeman, District Judge
Tanner Law & Strategy Group, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk