IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY LEWIS CROCKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70418

ORDER OF AFFIRMANCE

Anthony Lewis Crockett appeals from a judgment of conviction entered pursuant to a guilty plea of child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, Crockett claims the district court erred by enforcing a guilty-plea-agreement term that required him to "stay out of trouble" because it was vague.

The record does not demonstrate this issue was preserved for appeal; therefore, Crockett is not entitled to relief absent a demonstration of plain error. *See Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) ("[T]he proper time for [a defendant] to object to a particular term in a written plea agreement was prior to signing the agreement and entering his guilty plea."); *Gallego v. State*, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (reviewing unpreserved claims for plain error), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 775 n.12, 263 P.3d 235, 253 n.12 (2011).

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Crockett's written guilty plea agreement stated, "If Defendant fails to stay out of trouble or failed to show proof of attending Domestic Violence Counseling and Parenting Classes while awaiting sentencing, Defendant stipulates to prison and the parties retain the right to argue as to the length of Defendant's prison sentence." While awaiting sentencing, Crockett was arrested for possession of a firearm by a prohibited person.

The district court found Crockett's new offense violated the guilty plea agreement's stay-out-of-trouble term. It took judicial notice of Crockett's waiver of the preliminary hearing and his negotiations in the new case. And it ruled the State was free to argue Crockett had stipulated to a prison sentence in the instant case. We conclude the stay-out-of-trouble term was not vague as applied in this case and Crockett has not demonstrated plain error. *See generally Sparks*, 121 Nev. at 112, 110 P.3d at 489 (observing the courts will enforce the unique terms of the parties' plea agreement).

Second, Crockett claims the district court erred by relying on a material mistake of fact in reaching its sentencing decision. Crockett asserts the district court was incorrectly informed he had entered a guilty plea in his possession-of-a-firearm case and the district court relied on this misinformation to sentence him "to a maximum period of incarceration." Because this issue was not preserved for appeal, Crockett is not entitled to relief absent a demonstration of plain error. *See Gallego*, 117 Nev. at 365, 23 P.3d at 239.

The record reveals defense counsel informed the district court Crockett had "actually entered a plea on the other case" and the

prosecutor clarified for the district court Crockett had waived his preliminary hearing "and is pleading guilty to one count of possession of firearm by ex-felon. He will stipulate to . . . 12 to 30 months NDOC, which will run concurrent to the instant case." This record does not show the district court's sentencing decision was based on impalpable evidence, and we conclude Crockett has not demonstrated plain error. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

Third, Crockett claims his sentence constitutes cruel and unusual punishment because the district court's dramatic deviation from both the original plea negotiations and the recommendations of the Division of Parole and Probation were shocking and unduly harsh given the totality of the circumstances.

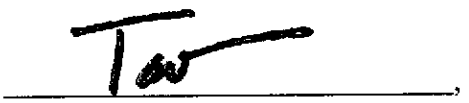
Regardless of its severity, a sentence that falls within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Crockett's two- to six-year prison sentence falls within the parameters of the relevant statute. *See* NRS 200.508(1)(b)(1). Crockett does not allege the statute is unconstitutional. And Crockett has not

demonstrated the district court relied on impalpable or highly suspect evidence. Having considered the sentence and the crime, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

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

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Coyer Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk