

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRAVIS LUKE LIEBERWIRTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70617

FILED

JUL 12 2017

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

ORDER OF AFFIRMANCE

Travis Luke Lieberwirth appeals from a judgment of conviction entered pursuant to a guilty plea of burglary. First Judicial District Court, Carson City; James Todd Russell, Judge.¹

Lieberwirth claims the district court erred by allowing non-victims to make victim impact statements, and he argues his substantial rights were affected because the victim impact statements were impalpable and highly suspect, went beyond what is authorized by NRS 176.015(3), and violated his constitutional right to “be sentenced individually, taking into account the individual, as well as the charged crime.”

Lieberwirth did not object to the victim impact statements; therefore, he is not entitled to relief absent a demonstration of plain error. *See Dieudonne v. State*, 127 Nev. 1, 4, 245 P.3d 1202, 1204-05 (2011). “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


¹The Honorable William A. Maddox, Senior Judge, presided over Lieberwirth’s sentencing.

93, 95 (2003) (internal quotation marks omitted). “[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice.” *Id.*

The record reveals the Division of Parole and Probation’s presentence investigation report recommended that Lieberwirth be sentenced to a prison term of 48 to 120 months to run consecutively to any other sentence. At sentencing, the State asked the district court to follow the Division’s recommendation, noting that Lieberwirth was released from custody in December 2014, he participated in a substantial number of burglaries immediately upon his release, and his prior offenses were of a similar nature. Thereafter, Alan and Cindy Rowe gave victim impact statements and the district court imposed the sentence recommended by the Division. The State concedes the Rowes’ house was burglarized while Lieberwirth was still in custody.

Even assuming this record demonstrates the Rowes were not victims and the district court erred by allowing them to give victim impact statements, *see* NRS 176.015(3), (5)(d), it does not demonstrate the district court relied on their statements at all, and nothing in the record suggests the district court relied solely on their victim impact statements in making its sentencing decision, *see Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). As Lieberwirth has not shown actual prejudice or a miscarriage of justice, we conclude the error is not reversible plain error and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Hon. William A. Maddox, Senior Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk