

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARRY ANN WERFELMAN, A/K/A
CARRIE ANN PEAVEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69950

FILED

AUG 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Appellant Carry Ann Werfelman first argues the district court abused its discretion by denying her motion for a competency evaluation filed prior to her sentencing hearing. "The conviction of an incompetent person is a violation of due process and a defendant must be competent at all stages of prosecution, including sentencing." *United States v. Rickert*, 685 F.3d 760, 765 (8th Cir. 2012) (internal citations omitted). "Competence [is] measured by the defendant's ability to understand the nature of the criminal charges and the nature and purpose of the court proceedings, and by his or her ability to aid and assist his or her counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding." *Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. 118, 122, 206 P.3d 975, 977 (2009); see also NRS 178.400 (setting forth Nevada's competency standard); *Calvin v. State*, 122 Nev. 1178, 1182, 147 P.3d 1097, 1100 (2006) (holding Nevada's competency standard conforms to the standard announced in *Dusky v. United States*, 362 U.S.

402 (1960)). "A hearing to determine a defendant's competency is constitutionally and statutorily required where a reasonable doubt exists on the issue," but "[w]hether such a doubt is raised is within the discretion of the trial court." *Melchor-Gloria v. State*, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983).

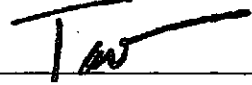
Werfelman asserted in her motion she was incompetent because she had recently suffered strokes and other medical issues, causing her to lack the ability to properly recall prior events. During the hearing on this matter, she also reported auditory and visual hallucinations. The district court heard arguments of counsel and conducted a lengthy discussion with Werfelman regarding her criminal and family history. The district court found Werfelman had throughout this matter alleged she suffered from various medical conditions in an attempt to delay the court proceedings. The court also stated that Werfelman's lengthy discussions regarding her criminal and family history demonstrated she had the ability to comprehend the nature of the proceedings and to appropriately recall events. For those reasons, the district court concluded it did not have a reasonable doubt regarding Werfelman's competency. Based upon the record before this court, we conclude the district court did not abuse its discretion in this regard.

Second, Werfelman argues the district court erred at sentencing by failing to explain its reasoning for imposing a sentence greater than that recommended in the presentence investigation report (PSI). Werfelman did not raise this claim in the district court, and thus, no relief is warranted absent a demonstration of plain error. See *Dieudonne v. State*, 127 Nev. 1, 4, 245 P.3d 1202, 1204-05 (2011).

During the sentencing hearing, the court listened to the arguments of both parties and heard Werfelman's request for a term of probation and mental health court. In the PSI, the Division of Parole and Probation recommended a term of 16 to 72 months in prison. The district court stated it considered probation, found probation was not appropriate in this case, and imposed a sentence of 28 to 72 months in prison. This was within the district court's discretion. *See* NRS 176A.100(1)(c). Notably, the district court is not required to follow the sentencing recommendation of the Division of Parole and Probation and Werfelman fails to demonstrate the district court was required to explain its reasoning for declining to follow the recommendation. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972) ("A trial court does not abuse its discretion by imposing a sentence in excess of that suggested by the [Division]"). In addition, Werfelman's sentence was within the parameters of the relevant statute. *See* NRS 205.060(2). Therefore, we conclude Werfelman fails to demonstrate error affecting her substantial rights. *See Dieudonne*, 127 Nev. at 4, 245 P.3d at 1204-05. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Thomas L. Stockard, District Judge
David Kalo Neidert
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk