

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYCE NEVILLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69759

FILED

FEB 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Amolca*
DEPUTY CLERK

ORDER AFFIRMING AND REMANDING

Appellant Bryce Neville appeals from a district court order revoking his probation and an amended judgment of conviction. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Neville pleaded guilty to transporting a controlled substance and possessing a controlled substance. The district court sentenced him to two consecutive prison terms of 19 to 48 months, suspended the sentence, and placed him on probation for a fixed period of five years. The district court subsequently revoked his probation and imposed the original sentence. This appeal followed.

First, Neville claims the district court violated his double jeopardy rights and NRS 176A.630 by cumulating his sentences because his probation was not cumulated. We conclude Neville waived the double jeopardy claim by not pursuing it in a direct appeal from the judgment of conviction, *see Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999), and the NRS 176A.630 claim lacks

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merit because that statute allows the district court to impose the original sentence when the probationer has violated the conditions of his probation.

Second, Neville claims the district court violated his confrontation and due process rights by considering hearsay regarding an arrest in which no charges were filed. Neville relies on *Anaya v. State*, 96 Nev. 119, 606 P.2d 156 (1980), but, unlike the appellant in that case, he did not object to the district court's consideration of an arrest report. See *Anaya*, 96 Nev. at 121, 606 P.2d at 157. Accordingly, we review for plain error. See NRS 178.602; *Gallego v. State*, 117 Nev. 348, 365, 23 P.3d 227, 239 (2011) (reviewing unpreserved claims for plain error), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (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 93, 95 (2003) (internal quotation marks omitted). “[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice.” *Id.*

Neville cannot show error affecting his substantial rights because he stipulated to the accuracy of the probation violation report. Accordingly, he has not demonstrated plain error. See *United States v. Olano*, 507 U.S. 725, 734 (1993) (In most cases, an error that affects substantial rights is one that “affected the outcome of the district court proceedings.”); *McNallen v. State*, 91 Nev. 592, 540 P.2d 121 (1975) (affirming revocation of probation where probationer did not refute violations); see also NRS 47.020(3)(c) (limiting the scope of title 4 of the


Nevada Revised Statutes); *Anaya*, 96 Nev. at 123-24, 606 P.2d at 158-59 (discussing the admissibility of hearsay in probation revocation hearings).

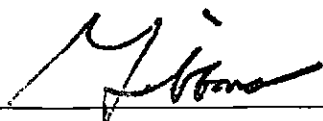
Third, Neville claims the district court erred by not pronouncing the minimum and maximum aggregate terms of imprisonment as required by NRS 176.035(1). The record supports Neville's claim. Accordingly, this case must be remanded so the district court can correct the amended judgment of conviction by adding the aggregate minimum and maximum terms of Neville's consecutive sentences as required by NRS 176.035(1). See *Mason v. State*, 132 Nev. ___, ___, 373 P.3d 116, 117 (2016).

For the reasons stated above, we

ORDER the order revoking probation and amended judgment of conviction AFFIRMED AND REMAND for the district court to enter a corrected amended judgment of conviction.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Bailus Cook & Kelesis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk