

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEY RAY GRIFFIN, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75186-COA

FILED

DEC 12 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joey Ray Griffin, II, appeals from a judgment of conviction entered pursuant to a guilty plea of obtaining and using the personal identifying information of an older or vulnerable person. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

First, Griffin argues the State committed prosecutorial misconduct during the sentencing hearing by making unsupported factual assertions and inferences. Griffin contends the State improperly asserted Griffin was arrested for 23 offenses and he had committed additional uncharged crimes. Griffin argues these statements were not supported by the record in this case. Griffin did not object to these statements at the sentencing hearing, and thus, he is not entitled to relief absent a demonstration of plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018), *cert denied*, 139 S. Ct. 415 (Oct. 29, 2018). Under the plain error standard, we determine whether there was an error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights. *Id.*

We have reviewed the prosecutor's statements and conclude they do not constitute error, let alone plain error. "Few limitations are

19-50382

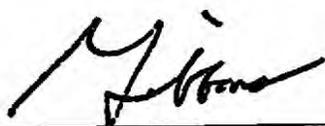
imposed on a judge's right to consider evidence in imposing a sentence" and "[p]ossession of the fullest information possible concerning a defendant's life and characteristics is essential to the sentencing judge's task of determining the type and extent of punishment." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). The sentencing hearing covered four separate cases, in which Griffin was initially charged with over 20 felonies. The State also informed the district court that the evidence in this matter demonstrated Griffin had committed additional crimes, but the State had not charged him with every possible offense. The State urged the district court to find Griffin had already received leniency due to the plea negotiations.

The State's sentencing arguments encompassed all four cases and the argument was supported by the combined records. Therefore, the State properly provided the district court with information concerning Griffin's criminal conduct. Accordingly, Griffin fails to demonstrate the State's arguments at the sentencing hearing amounted to plain error affecting his substantial rights.

Second, Griffin argues the district court abused its discretion when imposing sentence because it based its decision upon the State's contention that he committed numerous felonies and additional uncharged acts. The district court has wide discretion in its sentencing decision. See *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court that falls within the parameters of a relevant sentencing statute "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

As stated previously, the State's sentencing argument was supported by the combined record of Griffin's four cases and the record reflects the district court's sentencing decision was not affected by any improper argument, *see Randell v. State*, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) ("Judges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence." (brackets and internal quotation marks omitted)). In addition, Griffin's sentence of 54 to 144 months in prison falls within the parameters of the relevant statute. *See* NRS 205.463(3). We therefore conclude Griffin has not demonstrated the district court abused its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk