IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONEY ANTHONY WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78483-COA

FILED

MAY 11 2020

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

ORDER OF AFFIRMANCE

Toney Anthony White appeals from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit robbery, burglary while in possession of a deadly weapon, two counts of first-degree kidnapping with the use of a deadly weapon, two counts of attempted robbery with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and impersonation of an officer. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, White argues the district court erred by denying his request to represent himself without conducting a *Faretta*[1] canvass. A district court may properly deny a request for self-representation if the request is equivocal. *Lyons v. State*, 106 Nev. 438, 443, 796 P.2d 210, 213 (1990), *clarified on other grounds by Vanisi v. State*, 117 Nev. 330, 341, 22 P.3d 1164, 1171-72 (2001). The record reveals that White filed a motion requesting to withdraw his guilty plea and for either the appointment of substitute counsel or permission to represent himself. The district court

[1]*Faretta v. California*, 422 U.S. 806 (1975).

held a hearing concerning White's motion, discussed the motion with White, and clarified White's desire to move for the withdrawal of his guilty plea. Following the discussion, the district court decided to appoint substitute counsel. White acknowledged he understood the district court's decision to appoint substitute counsel and agreed that the district court had addressed his concerns. A review of White's motion and the transcript of the pertinent hearing demonstrates he did not make an unequivocal request to represent himself and the district court appropriately addressed White's motion and concerns without conducting a *Faretta* canvass. Therefore, White fails to demonstrate he is entitled to relief.

Second, White argues the district court erred by accepting his guilty plea despite his mental health issues. White appears to assert his plea was not knowingly and intelligently entered due to his mental health issues.[2] However, this court does not allow "a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction" in the first instance. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000). The record demonstrates White initially pleaded guilty, but was later permitted to withdraw the

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[2]To the extent White makes an independent claim of ineffective assistance of counsel for failing to investigate his mental health issues, this court does not "consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless." *Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006). An evidentiary hearing was not held concerning this claim and White did not demonstrate an evidentiary hearing would be needless. Therefore, we decline to consider this claim in this appeal.

guilty plea. White proceeded to trial and mid-trial he again entered a guilty plea. Although White mentioned he had mental health issues in his pro se motion to withdraw his initial guilty plea, White did not pursue a challenge to the validity of the guilty plea that resulted in his conviction on any basis prior to entry of the judgment of conviction. Therefore, this claim is not appropriately raised in this appeal and we decline to consider it.[3]

Third, White argues there was insufficient evidence to support his guilty plea for the kidnapping convictions. However, the record demonstrates that the factual bases for White's kidnapping convictions were set forth during the plea canvass and White acknowledged he committed those offenses. Therefore, we conclude that White is not entitled to relief for this claim.

Fourth, White argues his sentence constitutes cruel and unusual punishment because it is excessively harsh. Regardless of its severity, "[a] sentence 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));

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[3]White also argues the district court erred by denying a postconviction motion to withdraw his guilty plea in which he raised his mental health issues. However, White filed his postconviction motion several months after entry of the judgment of conviction and his notice of appeal. Moreover, White's notice of appeal does not designate the district court order denying the postconviction motion to withdraw his guilty plea as an order being challenged on appeal. *See* NRAP 3(c)(1)(B) (providing that a notice of appeal must "designate the judgment, order or part thereof being appealed"). Therefore, claims stemming from the district court's denial of White's postconviction motion to withdraw his guilty plea are not properly raised in this appeal and we also decline to consider those claims.

see also Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining that Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The aggregate sentence of life in prison with the possibility of parole in 20 years is within the parameters provided by the relevant statutes. *See* NRS 176.035(1); NRS 193.140; NRS 193.165(1); NRS 193.330(1)(a)(2): NRS 199.430; NRS 199.480(1)(a); NRS 200.320(2)(a); NRS 200.380(2); NRS 200.481(2)(e)(2); NRS 205.060(2). White does not allege that those statutes are unconstitutional. 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.

Fifth, White argues he is entitled to relief due to cumulative error. However, White failed to demonstrate any error and, accordingly, he is not entitled to relief.

Having concluded White is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk