

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GILBERT MARCOS CAMPOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79937-COA

FILED

SEP 16 2020

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

ORDER OF AFFIRMANCE

Gilbert Marcos Campos appeals from a judgment of conviction, pursuant to a guilty plea, of Driving Under the Influence of Alcohol Third Offense in Seven Years, a category B felony. First Judicial District Court, Carson City; James Todd Russell, Judge.

In December of 2016, Campos pleaded guilty to Driving Under the Influence of Alcohol Third Offense in Seven Years.¹ The district court then deferred Campos's sentence into a DUI diversion program pursuant to NRS 484C.340. Campos subsequently transferred from the Carson City DUI program to the Las Vegas DUI program. Following Campos's admission that he had violated the program's conditions by leaving the state and missing two mandated drug or alcohol tests, the Las Vegas DUI diversion court terminated Campos from the program and returned him to Carson City for sentencing.

At Campos's sentencing hearing, the district court stated, "under the statute, if you're removed from the DUI court program . . . you automatically go to prison." The district court then asked Campos's attorney if that was correct. Campos did not object to the court's interpretation but asked if Campos could continue the DUI diversion

¹We do not recount the facts except as necessary to our disposition.

program in Carson City. In its order, the district court revoked Campos's deferred sentence based on his admission to violating the program's conditions and sentenced him to prison. Campos now appeals.

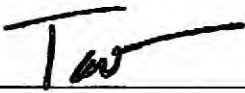
On appeal, Campos argues the district court erred because it misinterpreted whether it had the discretion to reassign him to the diversion program in Carson City. The State counters that the Las Vegas DUI Diversion court terminated Campos from the program after he freely admitted to violating the conditions of the diversion court program, and thus the district court did not abuse its discretion when it determined Campos violated the diversion program's conditions and sentenced Campos to serve time in prison.

At the outset, we note that the "failure to specifically object on the grounds urged on appeal precludes appellate consideration on the grounds not raised below unless the defendant demonstrates plain error." *Lamb v. State*, 127 Nev. 26, 40, 251 P.3d 700, 709 (2011) (internal quotation marks and citation omitted). To demonstrate plain error, a defendant must show that "the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice." *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (internal quotation and citation omitted). An appellant bears the burden of demonstrating he was prejudiced by the plain error. *Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005); *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) ("[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice."). Because appellant bears the burden of demonstrating plain error in order to have his forfeited error considered on appeal, this court will typically engage in plain error review only when the appellant argues plain error in his or her opening brief on appeal.

Here, Campos does not argue plain error on appeal. While Campos argues the district court erred in its interpretation of NRS 484C.340, Campos did not object to this interpretation below. On appeal, Campos does not argue that the court's error was plain from the record, or that it affected his substantial rights. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) ("Before this court will correct a forfeited error, an appellant must demonstrate that: (1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights."). Thus, this court will not consider Campos' precluded argument. Even if we were to consider it, we deem Campos' proffered interpretation of NRS 484C.340 to be unpersuasive. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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