

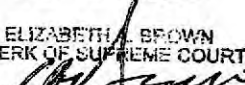
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER GREGORY GANCI,  
A/K/A GREGORY GANCI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79558-COA

FILED

SEP 21 2020

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Christopher Gregory Ganci appeals from a judgment of conviction, pursuant to a guilty plea, of bribing or intimidating a witness to influence testimony. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

This appeal involves two separate but related cases—one, the instant appeal, is directly implicated, while the other, *State v. Ganci*, District Court Case No. C-18-332166-1 (case C332166), is indirectly connected.<sup>1</sup> We first discuss case C332166. In that case, Ganci and his associates lured a salesman, Elkin Mejia-Escobar (Mejia), to a local hotel and casino where they robbed and kidnapped him at gunpoint. Eventually, Mejia escaped and made contact with hotel security. Law enforcement was notified of the incident and police apprehended Ganci a short time later as he was attempting to flee. Prior to trial in case C332166, Ganci sent his co-conspirators to Mejia's house, where they physically intimidated Mejia and offered him money in exchange for not testifying at Ganci's trial. Mejia reported the incident to law enforcement. Because Mejia expressed fear for his life, the State temporarily relocated him and his family to an undisclosed location and filed additional charges against Ganci in a separate indictment

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

for, among other things, bribing or intimidating a witness to influence testimony (the underlying case, District Court Case No. C-19-338331-2).

Approximately two weeks after charging Ganci with witness tampering, the State timely filed its notice of intent to seek punishment as a habitual criminal in the underlying case, which included ten prior felony convictions. Meanwhile, Ganci was convicted in case C332166 and sentenced to five consecutive life sentences. Two months later, Ganci pleaded guilty to one count of bribing or intimidating a witness to influence testimony in the underlying case. According to the terms of the guilty plea agreement, the State was entitled to argue for habitual criminal treatment. Later, the State supplemented its notice of intent to seek habitual criminal adjudication to include the convictions in case C332166. At the sentencing hearing, the State argued for a term of life without the possibility of parole pursuant to NRS 207.010(1)(b) (the large habitual criminal statute). Ganci asked for a sentence of not more than 60 months, but he did not contend that he was not eligible for sentencing under the large habitual criminal statute or that the district court was miscounting the number of prior convictions. The district court, however, sentenced Ganci to a term of life in prison without parole to run concurrent with the five life sentences he received in case C332166. This appeal followed.

On appeal, Ganci contends that the district court committed plain error when it miscounted his prior convictions and that his life sentence without parole is grossly disproportionate and therefore constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions.<sup>2</sup> We disagree and therefore affirm.

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<sup>2</sup>Ganci also argues for the first time on appeal that his guilty plea agreement was not voluntarily or knowingly entered into once the State

*The district court did not commit plain error when it adjudicated Ganci under the large habitual criminal statute*

Ganci argues that the district court erred when it adjudicated him under the large habitual criminal statute, NRS 207.010(1)(b) (2009), because it miscounted his prior convictions.<sup>3</sup> Specifically, Ganci contends that the district court erroneously counted his convictions in case C332166 as six felonies rather than one. Thus, on Ganci's view, the district court plainly erred because it sentenced him as a habitual offender based on two prior felonies instead of three as required by the statutory regime.

Because Ganci failed to object to this issue below, he has forfeited this claim on appeal and is therefore entitled only to plain-error review. *See LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014) (utilizing plain-error review in a case involving unobjected-to habitual

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supplemented its notice of intent to seek punishment as a habitual criminal to include his 2019 felony convictions in case C332166. In Nevada, it is well-established that the validity of a guilty plea may not be challenged on direct appeal if it is not timely challenged below. *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (“[A] post-conviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing for persons in custody on the conviction being challenged . . .”). In light of the supreme court's holding in *Harris*, and Ganci's failure to cite a relevant exception to this general rule, we decline his invitation to address this claim for the first time on direct appeal. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”).

<sup>3</sup>In 2019, the Legislature amended NRS 207.010(1)(b). As a result of that amendment (effective July 2020), a criminal defendant must now have at least seven prior felony convictions to qualify for large habitual criminal treatment. *See* 2019 Nev. Stat., ch. 633, § 86, at 4441. Because Ganci was adjudicated before July 2020, the prior version of NRS 207.010(1)(b), which required only three prior felony convictions, is referenced and applied herein.

criminal adjudication). “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.” *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). “[A] plain error affects a defendant’s substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a grossly unfair outcome).” *Id.* at 51, 412 P.3d at 49 (internal quotation marks omitted).

Although the district court erroneously counted Ganci’s convictions in case C332166 as six felony convictions instead of one, *Rezin v. State*, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979) (holding that “where two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single ‘prior conviction’ for purposes of applying the habitual criminal statute”), we conclude that Ganci cannot demonstrate plain error because he cannot show that his substantial rights were affected. First, Ganci understood that he potentially could be sentenced as a habitual criminal when he accepted the State’s plea offer. *Cf. Hodges v. State*, 119 Nev. 479, 484-85, 78 P.3d 67, 70 (2003) (recognizing that a criminal defendant can concede his eligibility for habitual treatment in a plea agreement); *see also* NRS 207.016(6).

Second, the record also indicates that Ganci did not oppose the existence and accuracy of his prior felony convictions. *Hodges*, 119 Nev. at 485, 78 P.3d at 70 (providing that a criminal defendant can stipulate to the validity of his prior felony convictions). Here, Ganci had actual notice of the prior felony convictions on which the State was relying for habitual criminal adjudication, and at no point did Ganci “dispute . . . the existence or validity of [his] prior convictions.” *Id.* at 485, 78 P.3d at 70. Specifically, the record

demonstrates that there were at least ten felony convictions, separate and apart from the convictions in case C332166, which were qualifying events under the habitual regime.<sup>4</sup> Despite actual notice of these felony convictions, Ganci failed to challenge any of them during his sentencing hearing and instead argued for leniency based on, among other things, his upbringing, his physical health, and his mental state.<sup>5</sup> Nor did Ganci repudiate the ten prior convictions via motion in the district court or in his briefs to this court on appeal.

Because Ganci did not contest the validity of any of his ten prior convictions contained in the original notice of intent, he necessarily acquiesced to their legitimacy and his eligibility for adjudication as a habitual offender, notwithstanding his additional convictions pursuant to case C332166. The record on appeal, moreover, reveals that once the State supplemented its notice of intent there were at least *eleven* felony convictions which supported sentencing Ganci as a habitual offender in the underlying case.

Furthermore, Ganci contributed to the error, thus, negating the possibility of plain error. *LaChance*, 130 Nev. at 276, 321 P.3d at 928

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<sup>4</sup>Notably, the presentencing investigation report (PSI) contains 19 felony convictions.

<sup>5</sup>At sentencing Ganci did argue that two of his prior convictions were improperly titled in the PSI. In both instances, the counts were titled assault with a deadly weapon resulting in great bodily injury when they should have been titled assault with a deadly weapon, great bodily injury likely to result. The State agreed that the PSI was incorrect, and the district court ordered these errors corrected. Ganci also argued that some of the counts listed in the PSI related to a 2002 conviction were misdemeanors rather than felonies, but he did not challenge the validity of the conviction for a felon in possession of a firearm, which was the count that the State included in its habitual adjudication notice.

(explaining that “plain error does not exist when the complaining party contributed to the error because a defendant ‘will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit’”) (quoting *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994))). In particular, Ganci agreed to move forward at the sentencing hearing even though the district court specifically stated that its eligibility determination was primarily based on the judgments of conviction from case C332166 and a 1998 conviction for felony larceny, which ultimately were admitted into evidence. Nonetheless, Ganci did not object, nor did he suggest that it was improper for the district court to proceed with sentencing under the large habitual criminal statute. Therefore, Ganci agreed to the sentencing procedure and invited the error. See *LaChance*, 130 Nev. at 276, 321 P.3d at 928 (rejecting a plain error argument where the appellant invited the error because “agreed to the procedure used in [his] case”). This conclusion is further supported by the fact that the record clearly indicates that the State used certified judgments of conviction during sentencing in case C332166 and the State offered photocopies of those documents in this case. The State could have quite easily reproduced them in the instant case had Ganci raised a timely objection. See *Leonard v. State*, 117 Nev. 53, 67, 17 P.3d 397, 406 (2001) (noting that a timely objection “affords the district court an opportunity to avoid [the] error”).

Accordingly, because the record demonstrates that Ganci qualified for adjudication under the large habitual criminal statute, requiring a minimum of three felony convictions, his enhanced sentence

under the same was not a “miscarriage of justice” and therefore did not affect his substantial rights.<sup>6</sup> *Jeremias*, 134 Nev. at 51, 412 P.3d at 49.

*Ganci’s sentence does not constitute cruel and unusual punishment*

Ganci argues that his sentence of life without parole for bribing or intimidating a witness is grossly disproportionate and is therefore violative of the United States and Nevada constitutions, specifically, the Eighth Amendment to the United States Constitution (Cruel and Unusual Punishments Clause) and Article 1, Section 6 of the Nevada Constitution (same). The State counters, arguing that Ganci’s sentence does not violate either constitution because the district court imposed the sentence in accordance with statutory guidelines.

Neither the Eighth Amendment to the United States Constitution nor Article 1, Section 6 of the Nevada Constitution requires “strict proportionality between crime and sentence but forbids only an extreme sentence that is grossly disproportionate to the crime.” *See Chavez v. State*, 125 Nev. 328, 347-48, 213 P.3d 476, 489 (2009). “Regardless of its

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<sup>6</sup>The district court noted at sentencing that all of the judgments of conviction “were produced in front of Judge Smith at the time” of sentencing in case C332166. The district court also observed that “*I don’t think there was any contesting that he qualified for the habitual there either, [and] it does reflect in the minutes that it was certified copies of everything that was provided there.*” (Emphases added.) Finally, the district court stated that “[i]t appears that what we have here are some copies [of the certified judgments of conviction] and all the certified copies were admitted in front of Judge Smith who also found that [Ganci] qualified for large habitual status.” Therefore, it appears that the district court could have properly taken judicial notice of the prior convictions admitted into evidence by Judge Smith pursuant to NRS 47.130. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (permitting judicial notice of a prior proceeding where the cases are closely related). Accordingly, the record supports the conclusion that Ganci qualifies for large habitual treatment.

severity, a sentence that is 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.” *Id.* (internal quotation marks omitted).

Generally, district courts have broad discretion in their sentencing decisions, *see Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and this court will avoid “interfering with the sentence imposed [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,” *Chavez*, 125 Nev. at 348, 213 P.3d at 490 (alteration in original) (quoting *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)).

Here, Ganci does not argue that the district court relied on impalpable or suspect evidence. Furthermore, the record clearly demonstrates that Ganci qualified as a habitual offender and that the sentence imposed was within the statutory limits authorized by the Legislature. *See* NRS 207.010(1)(b)(1) (authorizing a sentence of life without parole after three felony convictions). Consequently, the district court did not abuse its discretion by imposing the life sentence, nor is the sentence cruel and unusual.

Nevertheless, Ganci contends that his sentence is grossly disproportionate and therefore unconstitutional under *Solem v. Helm*, 463 U.S. 277 (1983). We are unpersuaded by this argument. In *Solem*, the United States Supreme Court concluded that “analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.” *Id.* at 292. The



second and third factors are only relevant, however, “in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of *gross disproportionality*.” *Harmelin v. Michigan*, 501 U.S. 957, 960 (1991) (Kennedy, J., concurring in part and concurring in judgment) (emphasis added). Thus, a sentence must be grossly disproportionate, not merely disproportionate, to violate the Cruel and Unusual Punishments Clause. *See id.* at 965 (providing that “[t]he Eighth Amendment contains no proportionality guarantee”). Moreover, “reviewing courts should grant substantial deference to legislative determinations” when analyzing sentencing guidelines under the Eighth Amendment. *Id.* at 959.

We conclude that the sentence imposed in this case does not lead to an inference of gross disproportionality. Ganci suggests that his crime was of low harmfulness and therefore a life sentence without parole leads to an inference of gross disproportionality. This contention, of course, ignores the obvious: Ganci was not sentenced to life without parole because he committed a single act of bribing or intimidating a witness. The district court imposed such a sentence because Ganci has been convicted of at least 19 felonies (all inclusive), including multiple counts of assault, possession of a firearm by a prohibited person, kidnapping, and robbery. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (“In weighing the gravity of [an] offense, we must place on the scales not only his current felony, but also his long history of felony recidivism.”). Thus, given his long list of prior felonies, Ganci’s sentence is not grossly disproportionate but rather fully effectuates the purpose of Nevada’s habitual criminal statute. *Lader v. Warden*, 121 Nev. 682, 689, 120 P.3d 1164, 1168 (2005) (providing that NRS 207.010 is “intended to increase and supersede the punishment for a recidivist criminal beyond any sentence he would otherwise face”).

Moreover, on the facts of the case, Ganci's claim that his crime was of low harm is unavailing, especially since he engaged in witness tampering that caused the State to relocate a key witness in the related case that involved robbery and kidnapping with a firearm and resulted in an additional criminal indictment. Thus, Ganci's characterization of his conduct as "low harm" is without merit. As the district court aptly noted when it rendered its sentence, "there's not any violence that occurred in this case. But it really strikes at the heart of the criminal justice system to get involved in trying to alter the course of criminal justice by intimidating and bribing witnesses."

For the foregoing reasons, we conclude that the district court did not abuse its discretion or violate the Eighth Amendment because Ganci's sentence was authorized by statute. Furthermore, in light of his extensive criminal history, we also conclude that Ganci's sentence of life without parole does not lead to an inference of gross disproportionality and therefore does not run afoul of the United States or Nevada constitutions. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Douglas W. Herndon, District Judge  
Brown Mishler, PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk