

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER JAMES WEYGANT, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81004-COA

FILED

MAR 05 2021

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

ORDER OF AFFIRMANCE

Christopher James Weygant, II, appeals from a judgment of conviction entered pursuant to an *Alford*¹ plea of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, Weygant argues the district court erred by denying his motion to withdraw his *Alford* plea without conducting an evidentiary hearing. In his motion, Weygant asserted his counsel failed to explain the failure-to-appear clause (FTA) or the penalties he faced if he violated the clause, he was confused when he entered his plea, his counsel told him how to respond during the plea canvass, and he was innocent.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev.

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, “the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just.” *Id.* at 603, 354 P.3d at 1281. The district court’s ruling on a presentence motion to withdraw a guilty plea “is discretionary and will not be reversed unless there has been a clear abuse of that discretion.” *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

At the hearing concerning Weygant’s motion, the district court stated it reviewed the pleadings and the record concerning the entry of Weygant’s plea. The district court noted that during the plea canvass, a previous district court judge went into great detail regarding the purpose of an *Alford* plea and Weygant affirmed he understood. The district court also noted that the previous judge explained the FTA clause to Weygant and Weygant affirmed he understood. Moreover, at the plea canvass, Weygant acknowledged he read and understood the written plea agreement. The written plea agreement contained the FTA clause and it explained to Weygant his responsibility to stay out of trouble and to participate in the interview with the Division of Parole and Probation. The FTA clause also informed Weygant of the potential prison terms he faced pursuant to the habitual criminal enhancement if he violated the clause.

The district court found, based on the totality of the circumstances, Weygant did not demonstrate a fair and just reason to permit withdrawal of his *Alford* plea. After review of the record, we conclude Weygant has not demonstrated the district court abused its discretion by denying his motion to withdraw his *Alford* plea without conducting an evidentiary hearing.

Second, Weygant argues the State committed misconduct during the sentencing hearing by making inflammatory statements concerning his criminal history and improperly asserting he was a violent person. Weygant did not object to the State's arguments, and thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

We have reviewed the prosecutor's statements and conclude Weygant did not demonstrate plain error. The State properly informed the district court regarding the facts of the offense, the cause of the victim's death, and Weygant's extensive criminal history. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) ("Few limitations are imposed on a judge's right to consider evidence in imposing a sentence. . . . Possession 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."). The district court made no reference to the challenged portions of the State's argument when imposing sentence,

and Weygant does not demonstrate the district court's sentencing decision was affected by an 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)). Accordingly, Weygant fails to demonstrate the State's arguments at the sentencing hearing amounted to error affecting his substantial rights.

Third, Weygant argues the district court improperly permitted the persons providing victim impact testimony to state that he was a gang member, had a history of violent activities, and showed no remorse. Weygant did not object to the challenged testimony, and thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

Pursuant to NRS 176.015(3)(b), victims may "[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution." During the sentencing hearing, the victim's relatives discussed their feelings of loss as a result of the victim's death, their views that Weygant was responsible for the victim's death, and their opinions concerning Weygant's character and the appropriate sentence. Weygant fails to demonstrate this testimony went beyond reasonable views concerning the crime and the person responsible for the victim's death. To the extent that any of the victim

impact testimony was erroneously admitted, Weygant does not demonstrate any error affecting his substantial rights because the district court made no reference to the victim impact testimony when imposing sentence. See *Randell*, 109 Nev. at 8, 846 P.2d at 280 (“[A] district court is capable of listening to the victim’s feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision.”). Therefore, we conclude Weygant is not entitled to relief based upon this claim.

Fourth, Weygant argues the district court abused its discretion by declining to strike the State’s notice of its intent to pursue the habitual criminal enhancement. Weygant asserted the notice was not timely filed. Weygant also contends the district court may have improperly declined to strike the notice because the State improperly asserted that a different district court judge had already decided this issue.

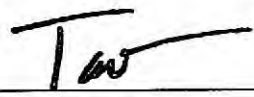
NRS 207.016(2) provides, in relevant part, “[a] count pursuant to [the habitual criminal statutes] may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed . . . until 15 days after the separate filing.” “[T]he clear purpose of [the notice requirement] is to ensure that the defendant has notice that the State will request habitual criminal adjudication.” *LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014).

The record reveals that the State did not misinform the district court regarding the status of the notice. Rather, the State indicated it thought the issue may have already been decided, but recognized it may be mistaken and urged the district court to decline Weygant’s request to strike

the notice. The district court listened to Weygant's arguments concerning the merits of his request to strike the notice and concluded that Weygant was not entitled to relief. The district court found Weygant had sufficient notice of the State's intent to request habitual criminal adjudication, the sentencing hearing was properly scheduled to permit Weygant more than the 15-day notice required by NRS 207.016(2), and Weygant did not suffer any prejudice related to the filing date of the State's notice. Weygant fails to demonstrate the district court abused its discretion in this regard, and we conclude he is not entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 21
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk