

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VINCENT LEWIS ROLLER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81388-COA

FILED

MAR 19 2021

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Vincent Lewis Roller, Jr., appeals from a judgment of conviction entered pursuant to a guilty plea of battery with intent to commit sexual assault of a victim 60 years of age or older, three counts of sexual assault of a victim 60 years of age or older, and robbery of a victim 60 years of age or older. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

First, Roller argues the district court imposed an illegal sentence for the age enhancement to the robbery count, because it exceeded the statutory maximum. NRS 193.167(4)(a) provides that the age enhancement “[m]ust not exceed the sentence imposed for the crime or criminal violation.” The consecutive term of 96 to 240 months in prison imposed for the enhancement exceeded the sentence of 72 to 180 months in prison imposed for the primary offense. The State concedes the district court erred in imposing the longer enhancement sentence. Because the enhancement sentence is at variance with the controlling sentencing statute, we conclude the district court imposed an illegal sentence for the enhancement to the robbery count. Accordingly, we reverse the sentence for the age enhancement for the robbery conviction and remand this matter

to the district court for resentencing on the enhancement to terms within the statutory limits of NRS 193.167(4)(a).

Next, Roller argues the district court plainly erred by failing to articulate on the record each of the factors enumerated in NRS 193.167 prior to imposition of the sentences for that enhancement. Roller failed to raise this objection at his sentencing hearing. Therefore, 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, he must show “(1) there was error; (2) the error is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [his] substantial rights.” *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted). The record before this court shows the district court received information regarding each of the age enhancement sentencing factors and commented on them during sentencing. The district court specifically stated that its comments applied to each individual count. Accordingly, we cannot conclude Roller has demonstrated district court error plain from the record.

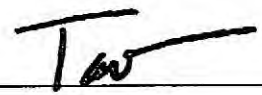
Finally, Roller argues the district court abused its discretion by imposing consecutive sentences because the crimes he committed were transactionally related. It is within the district court’s discretion to impose consecutive sentences. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015); *see also Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). This court will refrain from 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." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Because Roller does not allege—nor does the record reflect—that the district court relied on impalpable or highly suspect evidence when imposing Roller's sentence, we conclude the district court did not abuse its discretion by imposing consecutive sentences.

Having concluded that Roller is entitled to relief on his claim that the district court imposed an illegal age enhancement for the robbery count but that he is not otherwise entitled to relief, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk