

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ANTHONY CAULEY, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81889-COA

**FILED**

**MAY 14 2021**

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

*ORDER OF AFFIRMANCE*

Michael Anthony Cauley, Jr., appeals from a judgment of conviction, entered pursuant to a guilty plea, of child neglect. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

First, Cauley contends the district court abused its discretion by sentencing him to a term of probation rather than a diversion program provided under NRS 176A.240. Deferring judgment and providing for participation in a treatment program is left to the discretion of the district court. NRS 176A.240(1); see *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).

Cauley argues the district court relied on misrepresentations by the State regarding Cauley’s drug use and not on his substance abuse

evaluation. However, the district court noted it relied on Cauley's age, his failure to meet with the Division of Parole and Probation, and everything in his file, which included the evaluation. The district court sentenced Cauley to a term of six months in jail, suspended the sentence, and placed him on probation for twelve months. Cauley concedes the sentence imposed is within the parameters provided by the relevant statutes. See NRS 176A.100(1)(c); NRS 200.508(2)(b)(1). Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Cauley.

Second, Cauley argues that, pursuant to the sentencing guidelines provided in NRS chapter 176A, diversion is or should be mandatory in cases such as his. Deferring judgment for a defendant who suffers from a substance abuse disorder is left to the district court's discretion. NRS 176A.240(1). Further, a district court shall not defer judgment for any defendant convicted of a violation of NRS 200.508. NRS 176.211(3)(b). Because diversion was not mandatory and Cauley was convicted of a violation of NRS 200.508, we conclude the district court did not err in denying Cauley's request for diversion.

Third, Cauley argues the district court erred in ordering Cauley to reimburse the county for attorney fees in this matter. Cauley did not object below in the first instance, and therefore, he did not reserve the error. "The failure to preserve an error . . . forfeits the right to assert it on appeal." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). We may nevertheless review a forfeited issue for plain error, *id.*, but "the decision whether to correct a forfeited error is discretionary," *id.* at 52, 412 P.3d at 49. Cauley bears the burden of demonstrating plain error. See *Miller v.*

*State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005). Cauley failed to argue plain error in his opening brief on appeal, and we therefore decline to exercise our discretion to review this alleged error on appeal. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Steve L. Dobrescu, District Judge  
Kirsty E. Pickering Attorney at Law  
Attorney General/Carson City  
Lincoln County District Attorney  
Lincoln County Clerk