

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BYRON NEIL LEVI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81820-COA

FILED

AUG 06 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Byron Neil Levi appeals from an amended judgment of conviction, pursuant to a guilty plea, of battery causing substantial bodily harm, assault with the use of a deadly weapon, and discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

First, Levi argues the district court erroneously participated in the plea process in violation of *Cripps v. State*, 122 Nev. 764, 137 P.3d 1187 (2006). Levi did not object below in the first instance, and therefore, he did not preserve the error.¹ “The failure to preserve an error . . . forfeits the right to assert it on appeal.” *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d

¹Levi challenged the alleged error in a postsentence “motion to follow plea or alternatively to allow withdrawal of plea.” However, no statute or court rule permits an appeal from an order denying a motion to follow plea, see *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990), and a postsentence request to withdraw a guilty plea must be brought in a postconviction petition for a writ of habeas corpus. See *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014).

43, 48 (2018). Levi bears the burden of demonstrating plain error, *see Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005), and because he fails to argue plain error in his opening brief on appeal, we need not review this alleged error. However, because “the decision whether to correct a forfeited error is discretionary,” *Jeremias*, 134 Nev. at 52, 412 P.3d at 49, we may nevertheless review a forfeited issue for plain error, *id.* at 50, 412 P.3d at 48.

To demonstrate plain error, Levi 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.* (internal quotation marks omitted). Levi contends the district court violated *Cripps* when it informed Levi during the plea canvass that the court typically follows the parties’ negotiations. Because the challenged conduct occurred only during the plea canvass and after a plea agreement had been reached by the parties, the conduct did not violate *Cripps*. *See Cripps*, 122 Nev. at 771 n.24, 137 P.3d at 1191 n.24 (“Our holding . . . does not apply to the court’s conduct of the plea canvass after a plea agreement has been reached by the parties.”). Accordingly, Levi fails to demonstrate error plain from the record, and we conclude he is not entitled to relief on this claim.

Second, Levi argues the district court violated his due process rights when it affirmed his return to detention without a hearing and the district court erred by denying his motion in support of his right to issue a

subpoena for information related to his detention.² Because the record before this court indicates that both of Levi's claims relate to detention to which Levi is no longer subjected, there is no longer a live controversy, and we conclude these claims are moot. *See Newman v. State*, 132 Nev. 340, 344, 373 P.3d 855, 857 (2016), *as modified* (May 19, 2016).

Generally, this court will not hear a moot case. *Valdez-Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 158, 460 P.3d 976, 981 (2020). It may do so, however, where the issue "involves a matter of widespread importance that is capable of repetition, yet evading review." *Id.* at 158, 460 P.3d at 982 (internal quotation marks omitted). To fall under this exception, the advocating party "must prove that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important." *Id.* (quotation marks omitted). The second element requires the claimant to prove "that the question presented is likely to arise in the future with respect to the complaining party or individuals who are similarly situated to the complainant." *Id.* at 160, 460 P.3d at 983.

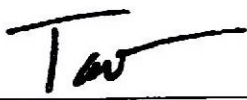
Levi failed to prove that there is a likelihood that a similar issue will arise in the future with respect to him or to similarly situated individuals. The only evidence to support Levi's argument to the contrary is a single letter from 2016 wherein the Las Vegas Metropolitan Police Department ("LVMPD") denied counsel's subpoena requesting records of payments to LVMPD employees for expert witness testimony. *Cf. id.*


²These issues arose after the guilty plea was entered.

(concluding the advocating party satisfied the second element by “provid[ing] documents from other criminal cases in which defendants have raised similar arguments before the justice court or district court about the process of setting bail”). Because the record does not demonstrate that these issues are likely to arise in the future, Levi has not demonstrated this court should entertain these otherwise moot issues. Therefore we,

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk