

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

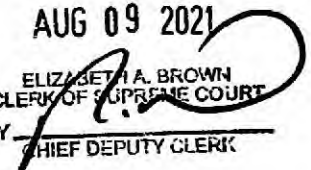
CODY ELDON MEILIKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81715-COA

FILED

AUG 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Cody Eldon Meilike appeals from a judgment of conviction, pursuant to a guilty plea, of two counts of eluding a police officer and trafficking in 4 grams or more, but less than 14 grams, of a controlled substance. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

First, Meilike claims the district court abused its discretion at the sentencing hearing by investigating facts that were in dispute. "A district court is vested with wide discretion regarding sentencing," and "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

Meilike argues the district court improperly investigated facts during the sentencing hearing related to the veracity of mitigation information Meilike provided to the district court and, in doing so, the district court denied Meilike the opportunity to rebut the results of the investigation. The district court sought and obtained Meilike's permission to conduct the investigation into the veracity of Meilike's information. Therefore, Meilike invited any alleged error. See *Rhyne v. State*, 118 Nev.

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1, 9 & n.12, 38 P.3d 163, 168 & n.12 (2002) (recognizing that a defendant may not raise alleged errors on appeal if he invited those errors in the court below). Moreover, the district court offered Meilike the option to continue the sentencing hearing to afford Meilike an opportunity to obtain and present additional evidence as to at least one of his mitigation allegations, but Meilike declined. Therefore, Meilike fails to demonstrate he is entitled to relief on this claim.

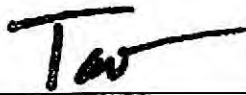
Second, Meilike claims the prosecutor should not have been allowed to make testimonial statements during the sentencing hearing because it deprived Meilike of the opportunity to cross-examine the prosecutor. Meilike did not object to the prosecutor's statements at the sentencing hearing. Therefore, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 49 (2018). To demonstrate plain error, Meilike 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).

Generally, a defendant has no right to cross-examine witnesses at a sentencing hearing. *See Summers v. State*, 122 Nev. 1326, 1333 & n.19, 148 P.3d 778, 783 & n.19 (2006) (concluding that the right to confrontation does not apply in capital sentencing proceedings); *cf. Buschauer v. State*, 106 Nev. 890, 894, 804 P.2d 1046, 1048 (1990) ("[I]f . . . the victim's statement of the crime presents significant facts not previously raised, cross-examination and even a continuance prior to cross-examination, *if requested*, may be required." (emphasis added)). Meilike thus fails to demonstrate that the lack of opportunity to cross-examine the prosecutor

constituted error plain from the record. Moreover, because the district court did not rely solely on the prosecutor's statements but also considered additional information prior to imposing Meilike's sentence, Meilike fails to demonstrate his substantial rights were affected by consideration of the prosecutor's statements. *See Denson*, 112 Nev. at 492, 915 P.2d at 286 ("[T]his court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence."). Therefore, Meilike fails to demonstrate he is entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
David Kalo Neidert
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk