

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82481-COA

**FILED**

**DEC 29 2021**

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

*ORDER OF AFFIRMANCE*

Eric Garcia appeals from a judgment of conviction entered pursuant to a guilty plea of lewdness with a child under 14 years of age and unlawful use of minor in producing pornography or as subject of sexual portrayal in performance. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

First, Garcia argues that he did not fully understand his guilty plea because the district court did not properly canvass him concerning the consequences of the plea. Garcia also asserts that he lacked the mental capacity to enter a valid guilty plea. Unless error clearly appears from the record, a challenge to the validity of a guilty plea must be raised in the district court in a motion to withdraw guilty plea or a postconviction petition for a writ of habeas corpus. *Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Garcia did not raise these claims in the district court, and he does not demonstrate on appeal that the alleged errors clearly appear from the record. We therefore decline to address these claims.

Second, Garcia argues that the district court erred by permitting his initial appointed counsel to withdraw from this case without providing Garcia proper notice of his intention to withdraw. Garcia did not

object to counsel's withdrawal, 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, Garcia 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).

During a hearing, Garcia's counsel moved to withdraw from this matter because he accepted employment with the district attorney's office. The district court granted counsel's motion and immediately appointed substitute counsel to represent Garcia. The record demonstrates that it was appropriate for Garcia's initial counsel to withdraw from this matter. Moreover, as the district court immediately appointed substitute counsel to represent Garcia, he was not deprived of counsel during the district court proceedings. Accordingly, Garcia did not demonstrate error that is plain from the record, and we therefore conclude that he is not entitled to relief based upon this claim.

Third, Garcia argues that the district court erred by failing to disqualify the Nye County District Attorney's Office from prosecuting this case. Garcia contends that his initial counsel withdrew from his case and began employment with the district attorney's office and, therefore, the entire office should have been disqualified from continuing to work on this matter. Garcia did not seek disqualification of the Nye County District Attorney's Office before the district court, and thus, he is not entitled to relief absent a demonstration of plain error. *See id.* at 50, 412 P.3d at 48-49. As stated previously, to demonstrate plain error, Garcia must show

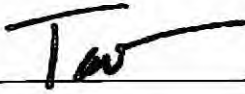
there was an error, the error was plain or clear, and the error affected his substantial rights. *See id.* at 50, 412 P.3d at 48.

“[A]n individual prosecutor’s conflict of interest may be imputed to the prosecutor’s entire office in extreme cases.” *State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. 158, 164-65, 321 P.3d 882, 886 (2014). Moreover, “the appropriate inquiry is whether the conflict would render it unlikely that the defendant would receive a fair trial unless the entire prosecutor’s office is disqualified from prosecuting the case.” *Id.* at 165, 321 P.3d at 886. A casual inspection of the record does not reveal that this was an extreme case that warranted disqualification of the entire Nye County District Attorney’s Office. In addition, a casual inspection of the record does not reveal that disqualification of the entire Nye County District Attorney’s Office was necessary for the prosecution of this matter to be handled in a fair manner. Accordingly, Garcia did not demonstrate error that is plain from the record, and we therefore conclude that he is not entitled to relief based upon this claim.

Fourth, Garcia argues he is entitled to relief due to cumulative error. However, Garcia failed to demonstrate any error, and accordingly, he is not entitled to relief.

Having concluded Garcia is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Robert W. Lane, District Judge  
JK Nelson Law LLC  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk