IN THE COURT OF APPEALS OF THE STATE OF NEVADA

APRIL PARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84612-COA

ORDER OF AFFIRMANCE

April Parks appeals pursuant to NRAP 4(c) from an amended judgment of conviction, entered pursuant to an *Alford*[1] plea, of two counts of felony exploitation of an older/vulnerable person, two counts of felony theft, and perjury. Eighth Judicial District Court, Clark County; Tierra Danielle Jones and Elham Roohani, Judges.

Parks argues the district court plainly erred in awarding $554,397.71 in restitution. Parks did not object to the district court's restitution award below; therefore, Parks 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, an appellant 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 [her] substantial rights." *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted).

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

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First, Parks argues the restitution award was not completely justified because the losses incurred by the victims of her charged crimes totaled only $412,943.02. "[A] defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution." *Erickson v. State*, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991).

The amended indictment alleged the victims' losses totaled $417,750.63, but the original indictment had charged Parks with additional counts and alleged the victims' losses totaled $559,205.32. The record indicates Parks agreed in a global plea agreement to pay a total of $559,205.32 in restitution for this case (district court case no. C321808) and a separate criminal case (district court case no. C329886). Parks agreed to pay restitution to both the victims of the charged offenses as well as "to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement."

Parks reaffirmed the restitution agreement at her plea canvass and again at her sentencing. The district court also held a post-judgment hearing to clarify the amount of the restitution awarded. At this hearing, the district found that a victim had been listed twice in the judgment of conviction and that the overall restitution amount should be lowered by $4,807.61. The district court then stated Parks owed $412,943.02 in restitution, and defense counsel immediately requested a bench conference. Thereafter, the district court corrected itself and stated Parks owed $554,397.71 in restitution, which is equal to the original $559,205.32 minus $4,807.61 for the duplicate entry. The district court subsequently entered an amended judgment of conviction to this effect.

The transcript of the bench conference is not in the record before us, and thus, we presume it supports the district court's restitution determination. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating an appellant is responsible for making an adequate appellate record and that when an "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"). Moreover, Parks stipulated to a restitution award of $559,205.32, and the record indicates that the amount of the award that exceeds $412,943.02 is owed to the victims of related offenses whose cases were dismissed or not prosecuted pursuant to the plea agreement. Therefore, Parks failed to demonstrate any error in the district court's restitution award that was clear under the current law from a casual inspection of the record.[2]

Second, Parks argues the restitution award was not completely justified because one victim had already received $8,529.84 and another victim had already received $50,000. Parks did not identify any evidence in the record demonstrating a payment of $8,529.84 had been made to, or was received by, the former victim. *See Rudin v. State*, 120 Nev. 121, 138, 86 P.3d 572, 583 (2004) ("The statement of an attorney is not evidence . . . .").

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[2]To the extent Parks contends in her reply brief that the amended judgment of conviction was legally deficient because it did not "specifically identify who lost what due to which crime," we decline to consider this argument because it was raised for the first time in a reply brief. *See* NRAP 28(c); *Browning v. State*, 120 Nev. 347, 368 n.53, 91 P.3d 39, 54 n.53 (2004). Moreover, any challenge to the amended judgment of conviction in district court case no. C329886 should be brought in a timely appeal from that judgment of conviction.

In addition, although there is grand jury testimony indicating a check for approximately $50,000 may have been sent to the latter victim's estate, Parks did not identify any evidence in the record corroborating this testimony or otherwise demonstrating the victim's estate received this payment.

More importantly, Parks agreed to pay the restitution awarded after she purportedly made these payments. As previously discussed, Parks also reaffirmed her agreement to pay this restitution on multiple occasions. In doing so, Parks repeatedly acknowledged the compensation owed to the victims in this matter. Therefore, Parks failed to demonstrate any error in the district court's restitution award that was clear under the current law from a casual inspection of the record.

Parks also argues that her sentence constitutes cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Parks' prison terms of 72 to 180 months for each count of exploitation of an older/vulnerable person, 24 to 60 months for each count of theft, and 19 to 48 months for perjury are within the parameters provided

by the relevant statutes, *see* 2013 Nev. Stat., ch. 229, § 4, at 978-79 (NRS 200.5099); 2011 Nev. Stat., ch. 41, § 10, at 162 (NRS 205.0835); NRS 199.120; NRS 193.130, and Parks does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 11
Hon. Tierra Danielle Jones, District Judge
Oronoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Attorney General/Ely
Eighth District Court Clerk