

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JON LOGAN KENNISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85226-COA

FILED

AUG 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY

[Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jon Logan Kennison appeals from a judgment of conviction, entered pursuant to a guilty plea, of conspiracy to commit murder and of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Kennison argues that the district court erred by permitting J. Earp to provide a victim impact statement at sentencing. In particular, Kennison contends Earp, who testified to being the victim's fiancée and long-term partner, does not constitute a "victim" for the purposes of Article 1, Section 8A, of the Nevada Constitution (also known as Marsy's Law) or NRS 176.015. Kennison also contends that Earp's testimony was not reliable.

Under Marsy's Law, "'victim' means any person directly and proximately harmed by the commission of a criminal offense under any law of this State." Nev. Const. art. 1, § 8A(7). The term "victim" includes "a member of the victim's family" if the victim is deceased. *Id.* The district court determined that Earp could speak at sentencing because she was

“directly and proximately harmed in this situation” due to her relationship to the victim.¹

We need not address whether the district court erred by permitting Earp to speak at sentencing, because “[t]his court will not vacate a judgment of conviction or sentencing decision unless the error affected the defendant’s substantial rights.” *Aparicio v. State*, 137 Nev. 616, 620, 496 P.3d 592, 596 (2021); see NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). “When determining whether a sentencing error is harmless, reviewing courts look to the record . . . to determine whether the district court would have imposed the same sentence absent the erroneous factor.” *Id.* (internal quotation marks omitted).

Kennison argues Earp’s statement impacted the district court’s sentencing decision because the district court stated (1) it enjoyed hearing some positive anecdotes about the victim from Earp and another victim speaker, and (2) the killing took the victim away from his loved ones. Although the district court listened to Earp’s statement, nothing in the record suggests the district court was “subjected to an overwhelming influence by [Earp] in making its sentencing decision,” *Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Rather, the district court indicated that its sentencing decision² was based on the severity of the underlying offense,


¹The district court did not determine whether Ms. Earp constituted a “victim” for the purposes of NRS 176.015 or a “member of the victim’s family” for the purposes of Marsy’s Law.

²Kennison received the minimum prison sentence of 2 to 5 years for the conspiracy charge, see NRS 199.480(b); the minimum prison sentence of 10 to 25 years for the murder charge, see NRS 200.030(5); and a prison sentence of 6 to 15 years for the mandatory deadly weapon enhancement,

stating the “sheer length of time and the pain that [the victim] must have gone through is unimaginable” and that Kennison was receiving a “harsh penalty for this because what [he] did is inexcusable.” Moreover, the other victim speaker, the victim’s brother, testified regarding the “brutal and awful experience” he and his family had gone through as a result of the victim’s death, and Kennison does not challenge this speaker’s testimony on appeal.

Because the district court’s sentencing decision was based on the severity of the offense and not on Earp’s statement, we conclude any error in permitting Earp to speak was harmless. *See Randell*, 109 Nev. at 7-8, 846 P.2d at 280 (“[J]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence.” (quotation marks omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

which is less than the maximum penalty permitted by statute, *see* NRS 193.165(1)-(2). The sentences were ordered to run consecutively.

cc: Hon. Carli Lynn Kierny, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk