


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACQUES LANIER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86243-COA

FILED

DEC 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jacques Lanier appeals from an “amended” judgment of conviction, entered pursuant to a guilty plea, of attempted murder with the use of a deadly weapon.¹ Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.

Lanier argues the district court violated his double jeopardy rights when it increased his aggregate sentence to 10 to 25 years in prison after pronouncing at the sentencing hearing an aggregate sentence of 10 to 24 years in prison. Lanier did not object to the modified sentence on double jeopardy grounds below; therefore, we review this claim for plain error. *See Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015) (stating “all unpreserved errors are to be reviewed for plain error without regard as to whether they are of constitutional dimension”). To demonstrate plain error, an appellant must show that: “(1) there was an ‘error’; (2) the error is

¹Although titled an “amended” judgment of conviction, the record indicates that no prior judgment of conviction was filed in this case.

‘plain,’ meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights.” *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).

With certain exceptions, the Double Jeopardy Clauses of the United States and Nevada Constitutions prohibit a district court from increasing a defendant’s sentence after the defendant has begun serving the sentence. *See Dolby v. State*, 106 Nev. 63, 65, 787 P.2d 388, 389 (1990). A defendant begins serving their sentence “after a judgment of conviction is signed by the judge and entered by the clerk, as provided by NRS 176.105.” *Miller v. Hayes*, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979) (internal quotation marks omitted). Before the written judgment of conviction is entered, the district court retains “jurisdiction to modify or suspend [its] earlier decision.” *Id.*; *see also Bradley v. State*, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1275 (1993) (recognizing a district court may modify its sentencing decision prior to the filing of a judgment of conviction).

In this matter, no judgment of conviction had been entered when the district court modified Lanier’s sentence. Therefore, the district court’s decision to increase Lanier’s sentence did not implicate Lanier’s double jeopardy rights, and we conclude Lanier fails to demonstrate any error.

Lanier also argues his due process rights were violated because he did not receive prior notice that the victim’s mother was going to state the following at the sentencing hearing: (1) that he was a “monster”; (2) that he took the victim’s car keys and cell phone immediately after the shooting; and (3) that he “even called his mother bragging about how he had” taken

the victim's life. Lanier contends prior notice was required because these statements exceeded the scope of NRS 176.015(3).

Under NRS 176.015(3), a victim must be afforded an opportunity to “[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.” “Where a victim impact statement refers only to the facts of the crime, the impact on the victim, and the need for restitution, a victim testifying as a witness must be sworn in, but . . . cross-examination and prior notice of the contents of the impact statement normally are not required.” *Cassinelli v. State*, 131 Nev. 606, 620, 357 P.3d 349, 359 (Ct. App. 2015). However, an opportunity for cross-examination and prior notice are required if “an impact statement includes references to specific prior acts of the defendant that fall outside the scope of NRS 176.015(3).” *Id.*

The challenged statements did not refer to specific prior acts that fall outside the scope of NRS 176.015(3). The statement that Lanier was a “monster” reasonably expressed the victim speaker’s views toward Lanier. *See Buschauer v. State*, 106 Nev. 890, 893, 804 P.2d 1046, 1048 (1990) (“Views’ on the defendant clearly encompass opinions as to the defendant’s general character.”). And the statements regarding Lanier’s actions in the immediate aftermath of the shooting were related to the crime and bore upon Lanier’s culpability for the shooting.² Therefore, due process

²To the extent Lanier argues that his actions after the shooting would not have been admissible at trial as *res gestae* because Nevada precedent narrowly construes NRS 48.035(3), we note that NRS 48.035(3) does not apply to sentencing. *See* NRS 47.020(3)(c).

did not require prior notice of the contents of the victim's mother's testimony.

Moreover, even if the State was required to provide notice of the challenged testimony, any failure to do so was harmless. *See Dieudonne v. State*, 127 Nev. 1, 9 n.3, 245 P.3d 1202, 1207 n.3 (2011) (stating the erroneous admission of victim impact statements is reviewed for harmless error); *see also* NRS 178.598. The district court stated that it was not considering the victim's mother's statement that the defendant had taken the victim's property or the victim's mother's characterization of the aforementioned call in determining Lanier's sentence. And there is no indication in the record that the challenged statements influenced the district court's sentencing decision; rather, the district court indicated the sentence was based on the severity of the offense and the extent of the victim's injuries. Therefore, the record indicates the challenged testimony did not influence the district court's sentencing decision, and we conclude Lanier is not entitled to relief on this claim.

Lanier also argues the district court failed to articulate specific findings in support of the deadly weapon enhancement as required by NRS 193.165 and *Mendoza-Lobos v. State*, 125 Nev. 634, 218 P.3d 501 (2009). Lanier did not object to the sufficiency of the district court's findings during sentencing; therefore, we review this claim for plain error. *See Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 507.

In determining the length of the deadly weapon enhancement, a district court must consider (1) the facts and circumstances of the crime, (2) the defendant's criminal history, (3) the impact of the crime on any

victim, (4) any mitigating factors presented by the defendant, and (5) any other relevant information. NRS 193.165(1)(a)-(e). The district court must also state on the record that it has considered these factors in making its determination. NRS 193.165(1). Here, the district court did not state on the record that it had considered the factors outlined in NRS 193.165(1) in determining the length of the deadly weapon enhancement. Therefore, the district court's error is plain from the record.

However, the record reflects that the district court was provided information concerning all of the factors enumerated in NRS 193.165(1): it heard argument regarding the facts and circumstances of the crime and Lanier's criminal history; it listened to the testimony from the victim and the victim's mother; and it recognized Lanier's mitigating circumstances, including the fact that Lanier was himself the victim of a prior shooting. The district court also stated that it had reviewed the material submitted by the parties, which included Lanier's sentencing memorandum, letters of support, and a mental health evaluation. This evidence demonstrates the district court properly considered NRS 193.165(1)'s factors, despite its failure to make express findings regarding those factors on the record. Therefore, Lanier fails to demonstrate the district court's error affected his substantial rights.

Finally, Lanier argues that cumulative error requires reversal of his sentence. "The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." *Barlow v. State*, 138 Nev., Adv. Op. 25, 507 P.3d 1185, 1196 (2022) (quotation marks omitted). Lanier fails to demonstrate multiple

errors to cumulate; therefore, we conclude Lanier is not entitled to relief on this claim. *See Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (recognizing a sole error cannot, by itself, constitute cumulative error). For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Jennifer L. Schwartz, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³The Honorable Deborah L. Westbrook did not participate in the decision in this matter.