IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CONNER MICHAEL MCKENZIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86822-COA

ORDER OF AFFIRMANCE

Conner Michael McKenzie appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted sexual assault. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

McKenzie argues the district court abused its discretion at sentencing. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

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First, McKenzie claims the district court improperly relied on suspect evidence by considering the revised psychosexual evaluation[1] because it contained a factual error and questionable conclusions. McKenzie did not object below to the district court's consideration of the revised psychosexual evaluation, and he does not argue plain error on appeal. We thus conclude he has forfeited his ability to challenge the contents of the revised psychosexual evaluation, and we decline to review this claim on appeal. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error).

Second, McKenzie claims the district court (1) failed to make specific findings regarding the deviation between the two psychosexual evaluations and (2) should have stricken the revised evaluation and appointed a new evaluator. McKenzie fails to cogently argue that the district court abused its discretion and thus we need not consider this argument. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).[2]

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[1]After an initial psychosexual evaluation was completed, McKenzie moved the district court to strike it because it contained factual errors. The district court ordered a revised psychosexual evaluation, which was filed prior to sentencing.

[2]In a heading in his supplemental opening brief, McKenzie states that the district court abused its discretion by failing to articulate whether the psychosexual evaluation complied with NRS 176.139. McKenzie failed to cogently argue this claim in his supplemental opening brief and does so for

Third, McKenzie claims the district court imposed the maximum sentence without properly weighing the mitigation evidence and failing to engage in any discussion regarding what it considered in making its sentencing determination. The district court stated it had reviewed McKenzie's mitigation materials, including letters written on McKenzie's behalf and the revised psychosexual evaluation indicating that McKenzie is not a high risk to reoffend. And a district court is not required to articulate its reasons for imposing a particular sentence. *See Campbell v. Eighth Jud. Dist. Ct.*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998). In light of these circumstances, we conclude McKenzie fails to demonstrate the district court failed to properly weigh the mitigation evidence.

Finally, we note that McKenzie's 96-to-240-month prison sentence is within the parameters provided by the relevant statutes. *See* NRS 193.153(1)(a)(1); NRS 200.366(2). In light of our holdings above, and having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing McKenzie.

McKenzie also argues that NRS 176.139 is unconstitutional. McKenzie did not object to NRS 176.139's constitutionality below, and he does not argue plain error on appeal. We thus conclude he has forfeited this claim, and we decline to review it on appeal. *See Martinorellan v. State*, 131

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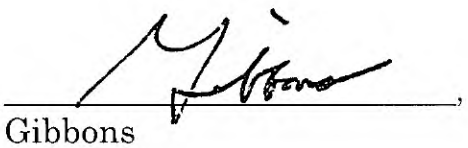
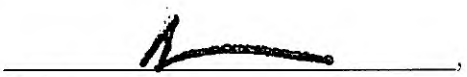
the first time in his reply brief. Thus, we decline to consider this argument. *See* NRAP 28(c) (providing that reply briefs "must be limited to answering any new matter set forth in the opposing brief"); *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014) (declining to consider argument raised for the first time in reply brief); *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

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"); *Jeremias*, 134 Nev. at 50, 412 P.3d at 48; *Miller*, 121 Nev. at 99, 110 P.3d at 58. Therefore, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk