

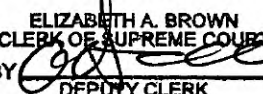
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAHAB AFSHAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86949-COA

FILED

JUL 03 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Shahab Afshar appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of two counts of attempted sexual assault. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Afshar argues the district court abused its discretion at sentencing. Afshar contends the district court violated his Fifth Amendment right against self-incrimination by considering his lack of remorse despite the fact that Afshar was not required to admit his guilt as part of his *Alford* plea. "A district court is vested with wide discretion regarding sentencing," and "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). Imposition of a harsher sentence based upon a defendant's exercise of their constitutional rights constitutes an abuse of discretion. See *Bushnell v. State*, 97 Nev. 591, 593, 637 P.2d 529, 531 (1981).

At sentencing, the district court listed various sentencing considerations, including Afshar's lack of remorse or responsibility. Afshar did not object below and is not entitled to relief absent a demonstration of

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

plain error.² See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant has the burden of showing there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. On appeal, Afshar does not argue the plain error standard, and he therefore forfeited plain error review of his claim. See *id.*

Even were we to consider Afshar's claim under plain error review, he does not show his substantial rights were affected. Before imposing sentence, the district court emphasized its conclusion that Afshar posed a danger to the community, and the sentence imposed was less than what was requested by the State. Afshar does not show the district court imposed a harsher sentence due to his refusal to admit guilt. Cf. *Brown v. State*, 113 Nev. 275, 291, 934 P.2d 235, 245-46 (1997) (concluding the district court abused its discretion when it told the defendant that whether he finally admitted guilt or continued to maintain his innocence would "make a 'big difference' in the length of the sentence"); *Bushnell*, 97 Nev. at 593, 637 P.2d at 531 (reversing the defendant's sentence where the court "announced that the sole reason for the disparity in sentences [from the co-defendant's] was the fact that [the defendant] maintained his innocence"). Therefore, we conclude there was no reversible error.


²Although the district court's statement regarding Afshar's lack of remorse occurred after the parties had rested their arguments, the statement occurred in open court with the parties present. Therefore, we conclude Afshar had an opportunity to object. Cf. *Todd v. State*, 113 Nev. 18, 24, 931 P.2d 721, 724 (1997) (finding defendant was deprived of an opportunity to object to the court's consideration of a letter sent to the district judge prior to sentencing because defendant was unaware of the existence of the letter).

Afshar also appears to argue that his sentence amounts to 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).

The sentence imposed is within the parameters provided by the relevant statutes, see NRS 193.153(1)(a)(1); NRS 200.366(2), and Afshar 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: Hon. Joseph Hardy, Jr., District Judge
The Draskovich Law Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk