

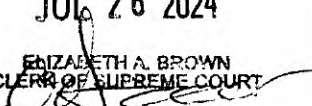
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SARA JANE SCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88031-COA

**FILED**

JUL 26 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Sara Jane Schell appeals from a judgment of conviction, entered pursuant to a guilty plea, of grand larceny, value \$1200 but less than \$5000. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Schell argues the State breached the plea agreement when it used language that the grant of probation would be “huge” or a “blessing” if the “court goes along with probation.” Schell did not object to the State’s argument below, thus she is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018); *see also Sullivan v. State*, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999). To demonstrate plain error, an appellant must show that: “(1) there was an ‘error’; (2) the error is ‘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*, 134 Nev. at 50, 412 P.3d at 48.

“[A] plain error affects a defendant’s substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a ‘grossly unfair’ outcome).” *Id.* at 51, 412 P.3d at 49.


The State was required by the plea agreement to recommend a sentence of probation. At the sentencing hearing, the State informed the district court it was standing by the recommendation of probation. The State then went on to emphasize that the grant of probation would allow Schell to pay restitution:

This gives the defendant an opportunity to pay restitution. It’s significant, \$4,976. My calculations, if the Court places her on probation for the maximum, which is 24 months, I believe, she would owe, to get it done by the time of probation ending, it would be \$207.33 a month. That’s not insignificant, but I would hope with this huge, if the Court goes along with probation, it would be a huge grant of probation or a huge blessing that she would indeed pay that amount each month and I would ask that you just hold her feet to that fire.

The State made no further comment at sentencing. Given these statements, Schell fails to demonstrate the State clearly argued for a sentence other than probation, either explicitly or implicitly. *See Sullivan*, 115 Nev. at 389, 990 P.2d at 1262 (holding that “in arguing in favor of a sentencing recommendation that the state has agreed to make, the prosecutor must refrain from either explicitly or implicitly repudiating the agreement”). Further, the district court based its sentence not on the State’s argument but rather the fact that Schell had 10 prior felony convictions and had 7

pending criminal cases in other jurisdictions. Thus, Schell fails to demonstrate that her substantial rights were violated. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk