


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERTO GUERRERO-GAMEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87848-COA

FILED

NOV 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Roberto Guerrero-Gamez appeals from a judgment of conviction, entered pursuant to a guilty plea, of aggravated stalking. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Guerrero-Gamez 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).

Guerrero-Gamez claims the district court improperly relied on impalpable and highly suspect evidence. Specifically, Guerrero-Gamez contends the court improperly considered the prosecutor’s argument that she had inputted information related to the facts of this case into a stalking

and harassment risk assessment and that the results demonstrated that 11 factors out of 14 were present for Guerrero-Gamez to reoffend. Guerrero-Gamez contends that this amounted to nothing more than anecdotal evidence that he posed a significant risk to reoffend.

Guerrero-Gamez did not properly preserve his argument because he objected to the prosecutor's comments on grounds different from those he now raises on appeal. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (recognizing that, in order to properly preserve an objection, a defendant must object on the same grounds he asserts on appeal). At the sentencing hearing, Guerrero-Gamez contended that he was objecting on the ground that the prosecutor was "presenting facts that would cause the Court to exceed the recommendation of the parties [sic] negotiated agreement." Guerrero-Gamez did not argue that the prosecutor's argument was based on impalpable or highly suspect evidence.

Because Guerrero-Gamez did not properly preserve this purported error, he forfeited the right to assert it on appeal, and we will only correct forfeited error if an appellant demonstrates plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Guerrero-Gamez does not argue plain error on appeal. Specifically, he does not argue that the alleged error is clear under current law from a casual inspection of the record, nor does he argue that the error affected his substantial rights. *See id.* We therefore decline to review this claim on appeal. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error); *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."); *see also State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev., Adv. Op.

90, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts “follow the principle of party presentation” and thus “rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present” (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))); *Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) (“We will not supply an argument on a party’s behalf but review only the issues the parties present.”).

Guerrero-Gamez also claims the district court improperly departed from the State’s sentencing recommendation despite the mitigating factors he set forth. The 72-to-180-month prison sentence imposed is within the parameters provided by the relevant statute. See NRS 200.575(3). And the district court stated that it had considered letters Guerrero-Gamez submitted in mitigation. Further, the district court was not required to follow either party’s sentencing recommendation. See, e.g., *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). In light of our holding above, and having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Guerrero-Gamez.

Next, Guerrero-Gamez argues the State violated the spirit of the plea agreement by qualifying its sentencing recommendation with argument about significant aggravating circumstances. In support of his claim, Guerrero-Gamez points to the following statement made by the prosecutor:

This case just, I have had a really icky feeling this entire time with this case. I am standing by my negotiation of two to five years; however, with that said, there is something telling me this victim and the community is not safe with [Guerrero-Gamez] on the street.

When the State enters into a plea agreement, it “is held to the most meticulous standards of both promise and performance,” and “violation of [either] the terms or the spirit of the plea bargain requires reversal.” *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (internal quotation marks omitted). “[I]n 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.” *Sullivan v. State*, 115 Nev. 383, 389, 990 P.2d 1258, 1262 (1999); see also *Kluttz v. Warden*, 99 Nev. 681, 684, 669 P.2d 244, 245-46 (1983) (providing that the prosecutor’s comment that the State entered into plea agreement without knowledge of all salient facts regarding defendant’s criminal history violated the spirit of the agreement).


Here, the plea agreement provided that the State agreed to “cap” its sentencing argument to a 24-to-60-month prison term and that the defense was free to argue for any legal sentence. The agreement further provided that the State reserved its right to present “arguments, facts, and/or witnesses at sentencing in support of the plea agreement.” At sentencing, Guerrero-Gamez argued for probation. And while the State argued aggravating circumstances, it offered those circumstances in support of its sentencing recommendation, stated multiple times its intent to be bound by the terms of the plea agreement, and asked that Guerrero-Gamez receive a two-to-five-year prison sentence. In light of these circumstances, we conclude that the State’s sentencing arguments were not made to repudiate the plea agreement based on a change in the prosecutor’s understanding of the case but instead were offered to demonstrate probation was not appropriate given the circumstances the prosecutor knew the “entire time.” *Cf. Kluttz*, 99 Nev. at 684, 669 P.2d at 245 (concluding

the State violated the spirit of the plea bargain when it insinuated the bargain should not be honored by advising the sentencing court that it “had entered into the plea bargain without knowledge of all the salient facts”). Guerrero-Gamez thus fails to demonstrate he is entitled to relief based on this claim, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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