IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLEMENT OBEYA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90057-COA

ORDER OF AFFIRMANCE

Clement Obeya appeals from a judgment of conviction, entered pursuant to an *Alford*[1] plea, of burglary. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Obeya argues the district court unconstitutionally delegated its sentencing authority to the Division of Parole and Probation (Division) when it imposed certain conditions of his probation. Specifically, the district court required Obeya to undergo mental health and drug evaluations and to "complete any counseling that [the Division] deems appropriate based upon such evaluation[s]." Obeya contends the latter requirement allowed the Division to determine the nature or extent of his punishment in violation of the United States and Nevada Constitutions.

Obeya did not object to his probation conditions below; thus, we review for plain error. *See Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970). We note that an *Alford* plea is the equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

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 '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). "[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. It is the appellant's burden to prove plain error. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005).

In support of his argument, Obeya relies on the United States Court of Appeals cases *United States v. Nishida*, 53 F.4th 1144 (9th Cir. 2022), and *United States v. Stephens*, 424 F.3d 876 (9th Cir. 2005). In *Nishida*, the appellant was sentenced to 10 years in prison followed by five years of supervised release. 53 F.4th at 1148. As part of her supervised release, the appellant was required to participate in substance-abuse and mental-health treatment, and the conditions stated the "probation officer, in consultation with the treatment provider, will supervise [Nishida's] participation in the program *(such as provider, location, modality, duration, and intensity)*." *Id.* (emphasis added). On appeal, the Ninth Circuit recognized that "mental-health and substance-abuse treatment can be provided in a variety of settings" and that the condition's broad language plainly permitted the probation officer to subject the appellant to "the full range of programs," including in-patient treatment. *Id.* at 1152. The Ninth Circuit held the district court improperly delegated its sentencing authority to the probation officer where it allowed the probation officer to determine

whether the appellant would be required to attend inpatient treatment. *Id.* at 1152-53.

In *Stephens*, the appellant was "required to participate in a drug and alcohol abuse treatment and counseling program, including urinalysis testing, as directed by the Probation Officer, as well as a program of mental health treatment as directed by the probation officer." 424 F.3d at 879 (internal quotation marks omitted). The Ninth Circuit held that this condition did not constitute an improper delegation of the district court's judicial power because "[n]o discretion on the subject was given to the probation officer, other than to perform the ministerial tasks of choosing the appropriate program and facilitating [the appellant's] attendance." *Id.* at 882.

Unlike the broad grant of authority in *Nishida*, which allowed the probation officer to subject the appellant to "the full range of [treatment] programs," including in-patient treatment, here, the challenged conditions were limited to "counseling" and did not clearly grant the Division the authority to order in-patient treatment. *Nishida*, 53 F.4th at 1152. Moreover, the district court did not grant the Division the authority to determine whether Obeya must undergo counseling; rather, the district court itself required that Obeya undergo counseling *if* the Division determined counseling was appropriate based upon Obeya's mental-health and drug evaluations. Neither *Nishida* nor *Stephens* clearly holds such a limited, conditional requirement constitutes an improper delegation of judicial authority. *Cf. Stephens*, 424 F.3d at 884 ("[T]he court does not improperly shirk its responsibility to impose the conditions of release merely by allowing the drug treatment professionals to design the course of treatment, where the court has specifically required that the treatment

include testing."). Therefore, Obeya fails to demonstrate any error was clear under current law from a casual inspection of the record, and we conclude he is not entitled to relief on this claim.

Obeya also argues the district court plainly erred by imposing conditions under NRS 176A.410 as part of his sentence because that statute applies to sex offenders and he was convicted of burglary, which is not a sex offense. The record indicates Obeya agreed to comply with the statutory probation conditions outlined in NRS 176A.410 in exchange for his favorable plea deal. In light of Obeya's decision to agree to the probation conditions outlined in NRS 176A.410 as part of his plea deal, he cannot challenge the imposition of those conditions on appeal.[2] *Cf. Burns v. State*, 137 Nev. 494, 504, 495 P.3d 1091, 1102-03 (2021) (concluding that, because Burns received the benefit of his plea deal when he was sentenced to a stipulated term of imprisonment, he could not challenge the sentence on appeal).

Even were we to review Obeya's claim, he is not entitled to relief. The district court has broad discretion to impose conditions of probation. *See* NRS 176A.400(1) (listing "without limitation" various terms and conditions the court may impose when granting probation); *see also Igbinovia v. State*, 111 Nev. 699, 707, 895 P.2d 1304, 1309 (1995) ("[A] district court judge enjoys wide discretion under grants of authority to impose . . . conditions [on probation]."). Although the conditions outlined in

[2]To the extent Obeya suggests his plea agreement is not enforceable because it is unconscionable, illegal, or in violation of public policy, he does not provide cogent argument in support of this claim, and we do not consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (recognizing that "[i]t is appellant's responsibility to present relevant authority and cogent argument").

NRS 176A.410 are mandated for certain convictions, nothing in the statute indicates the conditions cannot be imposed, pursuant to the district court's discretion, for other convictions. Given the district court's broad discretion to impose conditions of probation, Obeya fails to demonstrate the district court plainly erred by imposing conditions outlined in NRS 176A.410. Therefore, we conclude Obeya is not entitled to relief based on this claim.

Obeya also argues his sentence constitutes cruel and unusual punishment because the district court imposed the probation conditions outlined in NRS 176A.410. 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 district court sentenced Obeya to a suspended prison term of two to five years and placed him on probation for an indeterminate period not to exceed three years, which was within the parameters of the relevant statutes. *See* NRS 176A.100(1); NRS 176A.500(1); NRS 205.060(2). Obeya does not allege that these statutes are unconstitutional. In addition, as explained previously, Obeya fails to demonstrate the district court erred by imposing the conditions outlined in NRS 176A.410.

Moreover, Obeya was initially charged with sexual assault and battery by strangulation with the intent to commit sexual assault, Obeya

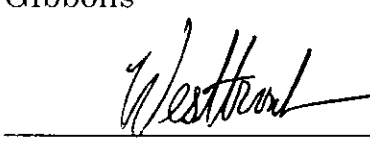
stipulated at the plea canvass that the State would be able to prove those charges beyond a reasonable doubt, and the victim testified at sentencing that Obeya strangled her and "raped [her] until [she] bled." After review, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Therefore, Obeya is not entitled to relief based on this claim.

Finally, Obeya contends cumulative error warrants a new sentencing hearing. As Obeya fails to demonstrate any errors to cumulate, we conclude Obeya is not entitled to relief on this claim. *See Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (stating a claim of cumulative error requires multiple errors to cumulate). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Monica Trujillo, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk