

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ALBERTO CANDELAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89655-COA

FILED

DEC 17 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Alberto Candelas appeals from a judgment of conviction, entered pursuant to a guilty plea, of felony attempted carrying of a concealed firearm or other deadly weapon. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Candelas pleaded guilty pursuant to a plea agreement, in which the State retained the right to argue at sentencing but “[b]oth parties stipulate[d] to [g]ross [m]isdemeanor treatment” of the charge. The plea agreement further provided that, in the event Candelas failed to appear, he agreed to a term of 364 days in jail. The plea agreement also contained a separate provision pursuant to which Candelas agreed that in the event he “fails to appear at any subsequent hearings . . . the State will have the unqualified right to argue for any legal sentence and term of confinement.”

The record reflects that on the date initially set for sentencing, Candelas stated he was retaining new counsel and requested the district court continue sentencing to allow sufficient time for new counsel to prepare for sentencing. Candelas failed to appear at the continued sentencing

hearing, and the district court granted the State's request for a bench warrant and continued sentencing. At the final sentencing hearing, the State requested the district court adjudicate Candelas guilty of a felony because of his failure to appear at the continued sentencing hearing and the subsequent bench warrant the court issued to secure his appearance. The district court adjudicated Candelas guilty of a felony, sentenced him to 12 to 30 months in prison, suspended that sentence, and placed Candelas on probation with the condition that he serve 364 days in jail.

On appeal, Candelas claims the State breached the plea agreement by requesting the court adjudicate him guilty of a felony after he failed to appear at the continued sentencing hearing. Because Candelas did not object on this ground below, we review for plain error. *See 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 v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).

Based on our review of the guilty plea agreement, which Candelas concedes "may" contain "some" conflicting language regarding the penalty for "non-appearance," we conclude Candelas fails to show that the State's request for felony adjudication was error that is "so unmistakable that it is apparent from a casual inspection of the record." *Burnside v. State*, 131 Nev. 371, 402, 352 P.3d 627, 649 (2015) (quotation marks omitted). Specifically, Candelas fails to show the State's request clearly constituted a

repudiation of the plea agreement, *see Sullivan*, 115 Nev. at 389, 990 P.2d at 1262, and Candelas' failure to object to the State's sentencing argument may be considered as evidence that he understood the State's argument to be within the bounds allowed by the plea agreement, *id.* at 387 n.3, 990 P.2d at 1260 n.3 ("Although a defendant's failure to object does not necessarily preclude appellate review of an alleged breach of a plea agreement, . . . such a failure may be considered as evidence of the defendant's understanding of the terms of a plea agreement"). Considering these circumstances, we conclude Candelas fails to demonstrate the State plainly breached the plea agreement. Thus, Candelas is not entitled to relief on this claim.

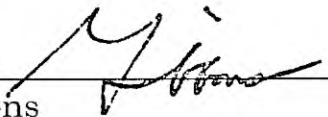
Candelas additionally claims the district court erred when it (a) did not conduct an evidentiary hearing regarding Candelas' failure to appear at the continued sentencing hearing, and (b) considered unsworn statements of an attorney outside the presence of Candelas' appointed counsel regarding whether Candelas had retained the attorney to represent him in this matter. Candelas did not raise these claims below; thus, they are reviewed for plain error.

First, because the plea agreement provided that any failure to appear automatically triggered Candelas' stipulation to a 364-day jail term and Candelas does not dispute he failed to appear, Candelas has not demonstrated the district court plainly erred by sentencing him without conducting an evidentiary hearing on his failure to appear and is therefore not entitled to relief on this claim. Second, the record reflects the attorney Candelas claimed to have retained appeared at the final sentencing hearing not as a witness but merely at the request of the district court to clarify

whether Candelas had retained him. Therefore, Candelas fails to demonstrate plain error, and we conclude he is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Attorney General/Carson City
Clark County District Attorney
Nevada Defense Group
Eighth District Court Clerk