

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW SCOTT TOOMEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91100-COA

FILED

FEB 10 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Andrew Scott Toomey appeals from a judgment of conviction, entered pursuant to a guilty plea, of principal to attempted murder of a peace officer and principal to robbery with the use of a deadly weapon. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Toomey argues the district court erred by denying his motion to sever. First, he contends severance was required to safeguard his due process rights at trial. “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (alteration in the original)). And “[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Id.* Thus, because Toomey pleaded guilty and did not reserve the right to raise the severance issue on appeal, *see* NRS 174.035(3), he waived this argument. Therefore, we decline to consider this claim.

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Second, Toomey alleges the denial of the motion to sever forced him to plead guilty. This claim is not properly raised on direct appeal. A challenge to the validity of a guilty plea should be raised in the district court in the first instance unless the error clearly appears from the record. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994). Here, Toomey did not raise his claim in the district court in the first instance, and the alleged error does not clearly appear in the record. Therefore, we decline to consider this claim on appeal.

Finally, Toomey alleges the denial of the motion to sever forced him to have a joint sentencing hearing with his codefendant, which prejudiced him. Toomey fails to demonstrate the denial of his motion to sever forced him into a joint sentencing, as Toomey could have filed a motion or requested a separate sentencing hearing but failed to do so. Thus, this claim is forfeited. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). However, this court can review a forfeited error for plain error. *Id.* 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.” *Id.* “[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.

Toomey relies on caselaw regarding severance of trial and fails to cite to any caselaw to support his claim that his sentencing hearing should have been severed from his codefendant’s. Thus, he fails to demonstrate any error that is clear under current law from a casual inspection of the record. Further, Toomey fails to demonstrate his

substantial rights were affected. Although Toomey contends his sentencing hearing was unfair because the district court was influenced by all the negative information it learned about Toomey's codefendant and was thus unable to individualize Toomey's sentence, "[j]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with legal training necessary to determine an appropriate sentence." *Randell v. State*, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) (brackets in original and internal quotation marks omitted). Moreover, the district court has wide discretion in its sentencing decision, *see Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and Toomey fails to demonstrate the district court relied on impalpable or highly suspect evidence when sentencing him, *see Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); *see also Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). Therefore, we conclude Toomey fails to demonstrate he is entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Nathan Tod Young, District Judge
Law Office of Maximilian A. Stovall
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk