

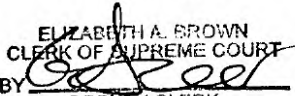
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIOVONNIE BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91029-COA

FILED

JUN 03 2026

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING SENTENCE AND REMANDING

Giovonnie Bradley appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Bradley claims the district court failed to articulate specific findings in support of the deadly weapon enhancement, as required by NRS 193.165(1) and *Mendoza-Lobos v. State*, 125 Nev. 634, 218 P.3d 501 (2009). Bradley asserts he was prejudiced by the district court's failure to make specific findings because the lack of findings resulted in a rote application of the sentencing enhancement without proper consideration of factors that could have rendered a different result. Bradley did not object to the sufficiency of the district court's findings during sentencing. We therefore review this claim for plain error. *See id.* at 644, 218 P.3d at 507. "Under plain-error analysis, an error that is plain from the record requires reversal if a 'defendant demonstrates that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice.'" *Id.* (internal

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

quotation marks omitted) (quoting *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008)).

NRS 193.165(1) provides that a person using a deadly weapon in the commission of a crime shall, in addition to the punishment for that crime, be sentenced to a term in prison between 1 and 20 years. In determining the length of the deadly weapon enhancement, a district court must consider: “(a) [t]he facts and circumstances of the crime; (b) [t]he criminal history of the person; (c) [t]he impact of the crime on any victim; (d) [a]ny mitigating factors presented by the person; and (e) [a]ny other relevant information.” NRS 193.165(1). The district court must also “articulate factual findings, on the record, regarding each of the factors enumerated” in NRS 193.165(1). *Mendoza-Lobos*, 125 Nev. at 643, 218 P.3d at 507.

Although the record shows the district court heard arguments and evidence relevant to the factors set forth in NRS 193.165(1)(a)-(e), the district court did not make any findings on the enumerated factors, nor did it provide any indication that it had considered the factors when imposing the deadly weapon enhancement. Instead, the district court perfunctorily imposed a deadly weapon sentencing enhancement of 96 to 240 months’ imprisonment consecutive to the sentence of 120 to 300 months’ imprisonment on the second-degree murder count. On this record, we conclude the district court’s failure to make the NRS 193.165(1) findings necessary to support imposing the deadly weapon enhancement constitutes plain error affecting Bradley’s substantial rights because the district court imposed the maximum sentence for the deadly weapon enhancement without proper consideration of the factors.

The lack of any findings regarding the factors enumerated in NRS 193.165(1) is especially concerning where, as here, the district court was further required to consider youth-related concerns pursuant to NRS 176.017(1).² NRS 176.017(1) provides that, if a person is convicted for an offense committed when the person was less than 18 years of age, “the court shall consider the differences between juvenile and adult offenders, including, without limitation, the diminished capacity of juveniles as compared to that of adults and the typical characteristics of youth.”

Here, Bradley argued in his sentencing memorandum and at the sentencing hearing that the district court should reduce his sentence pursuant to NRS 176.017(2) because he was 14 years old at the time he committed the offense, and the district court stated at the outset of the sentencing hearing that it had reviewed the sentencing memorandum and supporting evidence. Although nothing requires the district court to address the considerations outlined in NRS 176.017(1) on the record or indicate how they impact the sentence, *see Campbell v. Eighth Jud. Dist. Ct.*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998) (recognizing a district court need not articulate its reasons for imposing sentence unless required by statute), it is notable that the considerations required in NRS 176.017(1) overlap with some of the enumerated factors in NRS 193.165(1), for which the district court must articulate findings on the record. Specifically, the court is required to articulate findings regarding any mitigating factors and any other relevant information pursuant to NRS 193.165(1)(d) and (e), and the information that must be considered pursuant to NRS 176.017(1) constitutes relevant, mitigating evidence. Because of the district court’s

²On appeal, Bradley argues the district court failed to consider his age pursuant to NRS 176.017.

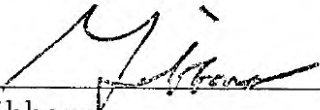
failure to articulate its findings as to the enumerated factors in NRS 193.165(1), we are unable to conclude from this record that the district court considered Bradley's youth as required by NRS 176.017(1) when imposing sentence.

Apart from arguing that the district court failed to articulate findings regarding the factors in NRS 193.165(1) and to consider his youth as required by NRS 176.017(1), Bradley contends the State made argument at sentencing for which there was no support in the record. Specifically, the State argued Bradley was affiliated with a gang and had posted images on social media expressing disrespect for a deceased person not associated with this case. Because there was no evidence in the record to support those arguments, Bradley argues that the district court relied on impalpable and highly suspect evidence in sentencing him. *See Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The record in this matter does not contain any evidence indicating Bradley was affiliated with a gang; indeed, the presentence investigation report and a dispositional report filed with the district court both stated Brady was not affiliated with any gang. Thus, it appears from this record that the State's argument constituted impalpable or highly suspect evidence. Although it is unclear whether the district court relied on the State's argument such that this matter should be assigned to a different judge on remand, *see Brake v. State*, 113 Nev. 579, 584, 939 P.2d 1029, 1033 (1997), based on all the above, we conclude Bradley is entitled to relief but not entitled to a different judge on remand. We therefore vacate

the sentence and remand for a new sentencing hearing on his conviction of second-degree murder with the use of a deadly weapon.³ Accordingly, we

VACATE Bradley's sentence and ORDER this matter REMANDED to the district court for resentencing proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

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

³Bradley additionally claims on appeal that the State committed prosecutorial misconduct by commenting on his lack of remorse, that the sentence imposed by the district court amounts to cruel and unusual punishment, and that the cumulative effect of the errors at sentencing deprived him of a fair proceeding. Based on the relief granted, we need not consider these remaining claims on appeal.