

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL ALVIN EMERICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41106

FILED

SEP 19 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of obtaining or using the personal identifying information of another. The district court sentenced appellant Carl Alvin Emerich to serve a prison term of 72 to 240 months.

On June 6, 2002, Emerich pleaded guilty to one count of obtaining or using the personal identifying information of another for using a reverend's identity to obtain goods at a Target store. At the original sentencing hearing, the victim testified that Emerich got his social security number by stealing the victim's mail and that other individuals in the victim's neighborhood also had their mail stolen. Additionally, Randy Houston, a Reno Police Detective with the financial crimes unit, testified that he knew Emerich and that Emerich had been committing theft crimes for the past ten years. After hearing arguments from counsel, the district court sentenced Emerich to serve a prison term of 96 to 240 months, stating: "[a]nd those other ones that you talked about in the neighborhood [other mailbox thefts], it was him. We all know it. And that's why he is going to prison for at least eight years." Emerich appealed, and this court remanded for a new sentencing hearing before a

different district court judge, concluding that Emerich was improperly punished for additional uncharged crimes of mailbox theft that were not proven at sentencing.¹

At the new sentencing hearing, the prosecutor stated: "and we look at this case and we have got someone whose mail is stolen from their mailbox. . . . I don't know about you. But I don't put mail in the mailbox. I go to the post office. Because I have spent too many years prosecuting people like this individual. I know the mailboxes aren't safe." Similarly, the prosecutor stated: "[w]e should write a letter to the editor of the paper or the Chronicle letting them know to watch out. Use a post office box. Don't use your mailbox because Mr. Emerich is in town." After hearing arguments from counsel, the district court resentenced Emerich to serve a prison term of 72 to 240 months. Emerich filed this timely appeal from the amended judgment of conviction.

Emerich argues that he is entitled to another resentencing hearing because the district court sentenced him for a prior bad act not proven at sentencing. Specifically, Emerich contends that there was no evidence presented that Emerich ever committed the crime of mailbox theft. We conclude that Emerich's contention lacks merit.

Preliminarily, we note that Emerich failed to preserve this issue for appeal. Specifically, Emerich failed to object at sentencing when the prosecutor referred to the fact that Emerich took mail from a mailbox. Failure to raise an objection with the district court generally precludes

¹See Emerich v. State, Docket No. 39903 (Order of Reversal and Remand, October 15, 2002).

appellate consideration of an issue.² This court may nevertheless address an assigned error if it was plain and affected the appellant's substantial rights.³ We conclude that no plain error occurred here.

This court will refrain from interfering with the sentence imposed "[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."⁴ Here, the transcripts of the resentencing proceeding indicate that the district court did not rely solely on the prosecutor's comments in determining the appropriate sentence, but instead based its sentencing decision, in part, on the fact that Emerich had seven prior convictions. In particular, the sentencing court stated:

You have seven -- seven convictions, one of which is for controlled substances. The rest are all property crimes, similar to the one that you stand convicted for. . . . You say you have a fear of dying in prison. The District Attorney expressed this . . . question as to why the habitual offender or the habitual felon wasn't brought against you. I mean that's your future. . . . [S]ociety needs to be protected against people who continually prey on other people in society. And certainly the argument lies in this case that, you know, that's

²See Emmons v. State, 107 Nev. 53, 61, 807 P.2d 718, 723 (1991).

³See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


what you do. And so I have taken that into consideration.

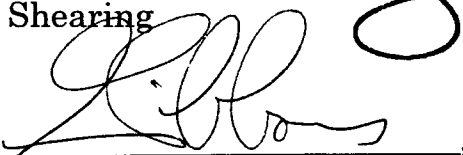
Accordingly, we conclude that the district court did not abuse its discretion at sentencing, and that Emerich has failed to show plain error.

Having considered Emerich's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.⁵


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Jack A. Alian
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.