

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DORIAN CULLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83208-COA

FILED

MAR 04 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dorian Cullen appeals from an order for revocation of probation and amended judgment of conviction. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

First, Cullen argues that the district court abused its discretion by revoking his probation because NRS 176A.510 requires the use of graduated sanctions for technical violations prior to the revocation of probation. Cullen contends that he was merely arrested but not charged with a new offense and that his arrest does not constitute proof that he committed a new crime. Cullen therefore asserts that the district court erred by concluding his arrest constituted a non-technical violation of his probation.

However, Cullen did not raise this issue in the district court but rather specifically stipulated at the revocation hearing that he committed a non-technical violation by being arrested for multiple offenses, including driving under the influence and possession of a controlled substance. Thus, Cullen is not entitled to relief absent a demonstration of plain error. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, Cullen must show "(1) there was error; (2) the error

is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [his] substantial rights.” *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted).

Cullen fails to demonstrate error that is plain from a casual inspection of the record. In light of Cullen’s stipulation that he committed a non-technical violation of his probation, he failed to demonstrate that there was insufficient evidence to justify the probation revocation rather than the imposition of graduated sanctions, *see McNallen v. State*, 91 Nev. 592, 592-93, 540 P.2d 121, 121 (1975) (affirming revocation of probation where probationer did not refute violation); *Dail v. State*, 96 Nev. 435, 440, 610 P.2d 1193, 1196 (1980) (“[C]onviction is not a precondition to probation revocation . . .”), or that the district court abused its discretion in revoking probation, *see Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974) (“[T]he law is well-established that revocation of probation is within the exercise of the trial court’s broad discretionary power . . .”). Therefore, we conclude that Cullen is not entitled to relief based upon this claim.

Second, Cullen argues that the district court was predisposed to revoke his probation and did not consider his arguments at the probation revocation hearing. Cullen notes that the district court stated at the sentencing hearing that it would send him to prison if he violated the terms of his probation and, therefore, indicated that it would not consider a request for reinstatement to probation. The record demonstrates that the district court listened to Cullen’s arguments concerning his request for reinstatement to probation, noted it had previously warned Cullen that he would be sent to prison if he violated probation, and ultimately concluded that Cullen’s arrest while on probation warranted revocation because it placed others in harm’s way. We conclude the district court’s comments do

not demonstrate that the district court closed its mind to the presentation of all the evidence or the arguments of the parties. Therefore, we conclude that Cullen is not entitled to relief based upon this claim. *See Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) (“[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence.”). Accordingly, we

ORDER the order for revocation of probation and amended judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Nevada Defense Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk