

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER ADAM TRUSCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83853-COA

FILED

JUL 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

CHRISTOPHER ADAM TRUSCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84183-COA

ORDER OF AFFIRMANCE

In Docket No. 83853, Christopher Adam Trusca appeals from a judgment of conviction entered pursuant to a guilty plea of possession of visual presentation depicting sexual conduct of a child. In Docket No. 84183, Trusca appeals from an order of the district court granting in part and denying in part a motion to modify sentence filed on November 12, 2021. These cases were consolidated on appeal. *See* NRAP 3(b). Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Docket No. 83853

First, Trusca argues the district court violated his due process rights by not requiring him to appear in person for his sentencing hearing.¹

¹Trusca and his attorney appeared at sentencing by video. Trusca claims he and his counsel were at different locations, and the State does not dispute this allegation.

He argues that the administrative order in effect at the time he was sentenced required that he appear in person because he was facing a prison term and NRS 178.388(1) and (3) require in-person sentencing unless waived.

Trusca did not object to appearing by video rather than appearing in person.² Therefore, he 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, Trusca 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). “[A] plain error affects the 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.

The administrative order in effect at the time that Trusca was sentenced stated, “Out-of-custody defendants shall appear in person for . . . sentencings where the negotiation contemplates a prison or jail sentence.” Eighth Judicial District Court Administrative Order 21-04, at 20. Trusca was out of custody at the time of sentencing, and Trusca’s guilty plea agreement envisioned a possible prison sentence as the parties were free to argue for any lawful sentence. *See* NRS 200.730(1) (allowing for a sentence of one to six years in prison). Therefore, under the administrative

²Trusca claims that he preserved the error by filing a motion to modify sentence shortly after the judgment of conviction was filed. This did not preserve the error. *See Riddle v. State*, 96 Nev. 589, 591, 613 P.2d 1031, 1033 (1980) (“[U]nless the error is plain, a contemporaneous objection is required to preserve an assignment of error for appeal.” (internal citation omitted)).

order in effect, Trusca may have been required to appear in person for his sentencing hearing. Further, there is no evidence in the record, nor do the parties argue, that Trusca waived his right to be present. *See* NRS 178.388(1), (3).

Nevertheless, even if there was error, Trusca bears the burden of demonstrating that his substantial rights were affected. To that end, Trusca argues his substantial rights were affected in three ways. First, he argues the sentencing court did not have the benefit of seeing him in person, resulting in the court's failure to see his remorse. Second, he argues he was not able to communicate confidentially with counsel because they were in different locations. Finally, he argues there was audio feedback during part of his sentencing hearing that made it difficult to hear. Trusca does not explain how the court would have better understood his remorse had Trusca appeared in person. Further, he offers no explanation as to why he and counsel could not have been in the same location during the hearing or otherwise worked out a means of private communication. Finally, while it appears there was audio feedback at the beginning of Trusca's sentencing hearing, it was caused by counsel, it was quickly fixed, and Trusca does not allege what portions of the sentencing hearing he was unable to understand or how that affected the sentencing hearing.

Therefore, Trusca fails to demonstrate the alleged error caused actual prejudice or a miscarriage of justice such that his substantial rights were affected. Thus, we conclude Trusca is not entitled to relief on this claim. *See Chaparro v. State*, 137 Nev., Adv. Op. 68, 497 P.3d 1187, 1191 (2021) ("The right [of a defendant] to be present is not absolute The presence of the defendant is a condition of due process to the extent that a

fair and just hearing would be thwarted by his absence, and to that extent only.” (internal quotation marks and punctuation omitted)).³

Second, Trusca argues the district court abused its discretion at sentencing because it relied on impalpable or highly suspect evidence and by imposing a prison term rather than placing Trusca on probation. Specifically, he claims the State’s argument that his drug addiction did not fuel his child pornography addiction was incorrect. Trusca provided citations to research that states that viewing child pornography can be correlated to using drugs in just over half of cases. Further, he argues his psychosexual evaluation supported his argument that he should have received probation.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes “[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.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). The granting of probation is discretionary. *See* NRS 176A.100(1)(c).

³Trusca was out of custody at the time of the sentencing hearing, and he does not claim he was prevented from attending the hearing in person. His failure to appear in person for the hearing despite being out of custody suggests he invited the alleged error. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (“The doctrine of invited error embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit.” (quoting 5 Am. Jur. 2d *Appeal and Error* § 713 (1962))).

The sentence imposed of 19 to 48 months in prison is within the parameters provided by the relevant statutes. *See* NRS 200.730(1). And Trusca does not demonstrate that the district court relied on facts supported only by impalpable or highly suspect evidence. At sentencing, the prosecutor argued that, in his opinion, while Trusca clearly had drug abuse problems, Trusca's viewing of child pornography was not fueled by his drug problems like committing a property or financial crime could be fueled by drug abuse. The prosecutor's opinion and argument were not fact, nor did Trusca demonstrate that the prosecutor's argument was wrong. *See Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135, 173 (2003) ("Correlation is not causation."). Further, the district court did not restrict its sentencing considerations to the drug abuse issue. Rather, it considered other evidence at sentencing, including a letter of support, a psychosexual evaluation, the presentence investigation report, and arguments of the parties. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion at sentencing by imposing a prison term rather than placing Trusca on probation. Therefore, we conclude Trusca is not entitled to relief on this claim.

Finally, Trusca argues that he is entitled to relief based on cumulative error. Trusca failed to demonstrate multiple errors; therefore, he failed to demonstrate he was entitled to relief on this claim. *See Burnside v. State*, 131 Nev. 317, 407, 352 P.3d 627, 651 (2015) (noting that cumulative error claims require "multiple errors to cumulate").

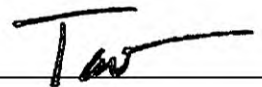
Docket No. 84183

In his motion, Trusca claimed his sentence should be modified because he was not present in person at sentencing and because the district court improperly relied on the State's argument regarding drug use and

viewing child pornography. Trusca's claims fell outside the narrow scope of claims permissible in a motion to modify sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion.⁴

Having concluded Trusca is not entitled to relief on appeal, we
ORDER the judgment of conviction and the order of the district
court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Resch Law, PLLC d/b/a Conviction Solutions
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴To the extent Trusca claimed his sentence was illegal, his claims also fell outside the scope of a motion to correct an illegal sentence. *See id.*