IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH N. RICCI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80292-COA

FILED
JAN 08 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph N. Ricci appeals from a judgment of conviction, entered pursuant to an *Alford*[1] plea, of two counts of coercion sexually motivated. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Ricci challenges events at his sentencing hearing and the validity of his sentence. The State asserts Ricci waived his right to a direct appeal pursuant to the guilty plea agreement. Ricci concedes he waived his right to appeal the conviction but asserts he is not challenging the validity of his conviction. Rather, Ricci claims he is challenging issues that arose during sentencing and he maintained his right to appeal those issues. Assuming, without deciding, that Ricci's contention about the scope of his waiver is correct, his arguments nevertheless fail.

First, Ricci contends the district court abused its discretion by relying on erroneous evidence in the presentence investigation report. "A district court is vested with wide discretion regarding sentencing," and "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286

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

(1996). However, "this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Id.*

Ricci argues the psychosexual evaluation included in the presentence investigation report contained information regarding uncharged crimes and that information amounts to impalpable and highly suspect evidence. At the sentencing hearing, Ricci's counsel explained the discrepancies regarding the uncharged crimes contained in the report. The district court explained its reasoning for the sentence, noting the heinous nature of the crimes themselves and that the number of lives affected by Ricci's crimes outweighed Ricci's mitigating factors. Ricci fails to demonstrate the district court relied solely on impalpable and highly suspect evidence in determining his sentence. Therefore, we conclude Ricci fails to demonstrate the district court abused its discretion at sentencing.

Second, Ricci argues his sentence amounts to cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime). The sentence of consecutive terms of 28 to 72 months in prison is within the parameters provided by the relevant statute, *see* NRS 176.035(1); NRS 207.190(2)(a), and Ricci does not allege that those statutes are unconstitutional. We conclude the sentence imposed

is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Third, Ricci contends the acts of uncharged misconduct must be removed from his presentence investigation report pursuant to *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 255 P.3d 209 (2011). Ricci put the error on the record but explicitly stated the error did not rise to the level of a *Stockmeier* issue. Given this record, we conclude Ricci forfeited this claim, and we decline to review it for plain error. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 49 (2018) ("[T]he decision whether to correct a forfeited error is discretionary.").

Finally, Ricci argues the cumulative effect of the errors in this case warrants reversal. As Ricci has identified no errors, we conclude there are no errors to cumulate. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk