

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0078**

State of Minnesota,
Respondent,

vs.

Abraham Palma Hernandez,
Appellant.

**Filed October 10, 2022
Affirmed
Reilly, Judge**

Mower County District Court
File No. 50-CR-20-595

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, John Brooks, Assistant County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant argues that he is entitled to be resentenced on his conviction for first-degree criminal sexual conduct because (1) the district court erroneously relied on an audio recording of another alleged sexual assault against the same victim that occurred years after the charged conduct, and (2) the victim translated some phrases in the audio recording from Spanish into English. We affirm.

FACTS

In March 2020, the Austin Police Department received a report that appellant Abraham Palma Hernandez had sexually assaulted a woman, the victim, over several years. Respondent State of Minnesota charged Hernandez with three counts of first-degree criminal sexual conduct for multiple acts of sexual penetration against an individual under 16 years old with whom he had a significant relationship; three counts of first-degree criminal sexual conduct for penetration, against an individual under 16 years old using force or coercion; and six counts of third-degree criminal sexual conduct for penetrating another person using force or coercion.

Hernandez agreed to plead guilty to one count of first-degree criminal sexual conduct and the state agreed to dismiss the remaining eleven counts. The parties did not have an agreement about sentencing. The district court accepted the plea agreement and ordered a presentence investigation (PSI) and a psychosexual evaluation. At sentencing, the district court permitted the victim to read a victim impact statement. During her statement, the victim told the district court that she had recorded a sexual assault and

wished to play a portion of the audio recording. The district court permitted the victim to play the recording, which was in Spanish. The victim translated portions of the recording from Spanish into English. Counsel also provided a transcript of the recording to the district court, which had been prepared by a court-certified Spanish interpreter. The district court then imposed a sentence of 172 months in prison, which was within the presumptive range. This appeal follows.

DECISION

Hernandez claims he is entitled to resentencing because the district court erred by permitting the victim to play an audio recording and translate portions of the recording from Spanish into English. Hernandez did not object in district court. With no objection, we review evidentiary issues for plain error. *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006) (citing Minn. R. Crim. P. 31.02). Under the plain-error test, we examine the record to determine whether there was (1) an error, (2) that was plain, and (3) that affected appellant's substantial rights. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. App. 2012). If these elements are satisfied, we will reverse if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). But if "any one of the requirements" of the plain-error test is not satisfied, we "need not address any of the others." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

Plainly Erroneous. Under the first two plain-error factors, Hernandez must show that an error occurred and that the error was plain. "An error is plain if it is clear or obvious." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). An

error is “clear or obvious” if it “contravenes case law, a rule, or a standard of conduct.” *Id.* (quotation omitted). An alleged error does not contravene case law unless the issue is “conclusively resolved.” *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008).

Hernandez claims the district court improperly permitted the victim to play a recording as part of her victim impact statement. We do not agree. Crime victims have “the right to submit an impact statement to the court at the time of sentencing.” Minn. Stat. § 611A.038(a) (2020). The purpose of a victim impact statement is to allow the victim to provide additional information directly to the district court about “the harm or trauma suffered by the victim as a result of the crime” and to allow the victim to express her “reaction to the proposed sentence or disposition.” *Id.* (a)(1), (3). Here, the victim stated she continues to struggle with pain and anxiety because of the sexual assault. The victim explained that she listened to the recording while she attempted suicide one time. The victim did not present the audio to prove that Hernandez sexually abused her, but to reveal the “harm or trauma” she suffered that led her to attempt suicide. The district court did not plainly err by permitting the victim to play a portion of the recording while explaining the harm and trauma she suffered.

Hernandez also argues the district court plainly erred by permitting the victim to translate some phrases in the audio recording from Spanish into English. During her statement, the victim stated that she said “no” twenty-seven times and told Hernandez to “leave [her] alone” eighteen times. The victim stated that Hernandez asked her if she planned to bathe today, if she would sleep without her underwear, if she would pretend to sleep, and if she would undress, among other statements. The victim was not a court-

appointed interpreter. But, at the same time, counsel provided the district court with a transcript of the recording. This transcript was prepared by a court-certified Spanish interpreter. We discern no plain error in the district court's decision to allow the victim to testify about the contents of the audio recording and to accept a transcript from a court-certified Spanish interpreter that did not materially differ from the victim's testimony.

Prejudice. We determine, further, that Hernandez was not prejudiced by the district court's sentencing decision. "The third prong, requiring that the error affect substantial rights, is satisfied if the error was prejudicial and affected the outcome of the case." *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). An appellant bears a "heavy burden" of proof on the third element of the plain-error test. *Kelley*, 855 N.W.2d at 283.

Hernandez argues the audio recording "significantly influenced the sentencing judge when deciding what sentence to impose." Hernandez's argument ignores that the district court imposed a guidelines sentence. The Minnesota Sentencing Guidelines set forth sentences that "are presumed to be appropriate for the crimes to which they apply." Minn. Sent. Guidelines 2.D.1 (2020). District courts are afforded "great discretion" in sentencing decisions and reversal is warranted "only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court is not required to state reasons for imposing a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). "We will affirm the imposition of a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination." *Id.* (quotation omitted).

The record reflects that the district court carefully evaluated all the testimony and information presented before imposing a guidelines sentence. The district court said that it had reviewed the psychosexual evaluation report and the PSI before sentencing. The psychosexual evaluation report revealed that Hernandez was only “taking partial ownership for the sexual abuse” and continued to deny “the more significant aspects of the abuse.” The PSI said that Hernandez “demonstrate[d] a general lack of remorse and empathetic understanding of how he impacted the victim and tend[ed] to see himself as the victim of the crime.” The PSI noted that Hernandez’s offense carried a severity level of “A.” Hernandez had zero criminal history points. According to the Minnesota Sentencing Guidelines, the presumptive sentence for Hernandez’s offense is a presumed commitment of 144 months. The lower range is a sentence of 144 months, with an upper range of 172 months in prison.

The district court also permitted Hernandez to make a statement but stopped him during his statement and cautioned him against “manipulation of the victim.” After hearing Hernandez’s remarks the district court stated, “it is clear to me that you do not understand the damage that you have caused [the victim] in this particular matter, nor do you understand the damage that she will continue to suffer.” The district court then imposed a sentence within the presumptive range. The district court’s statements before sentencing do not show that the recording of the assault had any bearing on its decision.

Hernandez argues that the parties “both anticipated that [he] would be sentenced to 144 months, which is precisely what the PSI recommended.” But the record shows that the parties did not have an agreement as to sentencing. At sentencing, the prosecutor noted

that the PSI recommended a sentencing range from 144 months to 172 months, and that the prosecutor would “make a recommendation in that range.” Defense counsel requested a 144-month commit and noted that, “[u]ltimately, it’s gonna’ be [Hernandez’s] job to take full responsibility here today and convince the Court why he should get the 144 and not the 172 months.” These statements establish that the parties did not have an agreement about sentencing.

In sum, the audio recording did not prejudice Hernandez because the district court imposed a sentence within the presumptive range. Nor did the certified translation differ materially from the translation provided by the victim at sentencing. The district court’s sentence is presumed to be appropriate. *Soto*, 855 N.W.2d at 308. Only a “rare” case merits reversal of the district court’s imposition of the presumptive guidelines sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This is not the “rare” case compelling reversal. As a result, we affirm the district court’s sentencing decision.

Affirmed.