

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060849-CA
v.)	
)	F I L E D
Charles Michael Earle,)	(April 26, 2007)
)	
Defendant and Appellant.)	2007 UT App 144

Second District, Ogden Department, 051903759
The Honorable Ernest W. Jones

Attorneys: Kevin C. Sullivan, Salt Lake City, for Appellant
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,
for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Defendant Charles Michael Earle appeals his sentence. Defendant argues that the district court abused its discretion when it allowed a letter to be read during the sentencing hearing. Specifically, Defendant contends that the letter contained numerous hearsay statements and was not sufficiently reliable to be considered by the district court. We affirm.

Regarding the issue of hearsay, the State correctly notes that this argument was not raised to the district court. "As a general rule, appellate courts will not consider an issue, including a constitutional argument, raised for the first time on appeal unless the trial court committed plain error or the case involves exceptional circumstances." State v. Brown, 856 P.2d 358, 359 (Utah Ct. App. 1993). "Utah courts require specific objections in order to bring all claimed errors to the trial court's attention to give the court an opportunity to correct the errors if appropriate." Id. at 361 (quotations and citation omitted). Since Defendant has failed to show plain error or any exceptional circumstances, we do not address his claim.

Next, Defendant argues that he was denied due process when the district court failed to exclude the letter in question

because it was not sufficiently reliable. "The trial court has substantial discretion in conducting sentencing hearings and imposing a sentence, and we will in general overturn the trial court's sentencing decisions only if we find an abuse of discretion." State v. Patience, 944 P.2d 381, 389 (Utah Ct. App. 1997) (citations omitted). However, Utah courts have previously noted that a district court's discretion is not unlimited. "The due process clause in both the United States and Utah Constitutions requires that a sentencing judge act on reasonably reliable and relevant information in exercising discretion in fixing a sentence." State v. Johnson, 856 P.2d 1064, 1071 (Utah 1993) (quotations and citation omitted).

Defendant argues that the letter was unreliable because it was not subject to cross-examination and was purportedly written by someone who was not a victim in the underlying case. In State v. Patience, 944 P.2d 381 (Utah Ct. App. 1997), this court stated:

Utah courts have not previously addressed whether a defendant is entitled to cross-examine testifying witnesses at sentencing hearings; however, both the United States Supreme Court and courts from other states have indicated that there is no due process violation where no cross-examination is allowed or where witnesses are not placed under oath, so long as the defendant has the opportunity to refute the evidence presented or challenge its reliability.

Id. at 390 (citations omitted). Thus, Defendant's bare assertion that the letter was not subject to cross-examination is insufficient to establish district court error.

In addition, the district court at sentencing is not limited to considering testimony from only those people considered to be victims under statute, see Utah Code Ann. § 77-38-2(9)(a) (2003), but may consider "any and all information that reasonably may bear on the proper sentence," State v. Sweat, 722 P.2d 746, 746 (Utah 1986) (quotations and citation omitted). Accordingly, Defendant's simple assertion that the letter was written by a person not a victim in this particular case is insufficient to establish district court error.

Defendant otherwise fails to show that the district court abused its discretion. Accordingly, we affirm.

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge