

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN HENRY ROSE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42885

FILED

AUG 23 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribick*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court adjudicated appellant John Henry Rose as a habitual felon and sentenced him to serve a prison term of life with the possibility of parole after 10 years, to run consecutively to any previously imposed sentence.¹

Rose's sole contention is that the district court abused its discretion in adjudicating him as a habitual felon. More specifically, Rose

¹NRS 207.012(1) provides in part:

“A person who . . . [h]as been convicted in this state of a felony listed in subsection 2; and . . . [b]efore the commission of that felony, was twice convicted of any crime which under the laws of the situs of the crime or of this state would be a felony listed in subsection 2, whether the prior conviction occurred in this state or elsewhere, is a habitual felon and shall be punished for a category A felony.”

See also NRS 207.012(1)(b)(2).

argues that because the prior convictions submitted by the State as proof of his habitual felon status were 17- and 26-years old respectively, they were stale. Rose also argues that the district court erred in its determination because “it failed to make a finding of habitual criminal status as ‘just and proper.’” We conclude that Rose’s contention is without merit.

Initially, we note that Rose has failed to address the proper sentencing statute and mistakenly argues on appeal as if he were adjudicated a habitual criminal pursuant to NRS 207.010, rather than as a habitual felon pursuant to NRS 207.012. With habitual felon adjudication, the district court does not retain the same discretion to dismiss the count.² Pursuant to NRS 207.016(2),³ the State filed a notice of habitual felon status and the district court conducted a hearing. The district court determined that the State provided sufficient documentation of Rose’s prior felony convictions, both for aggravated robbery in Texas. And, at no point in the proceedings below or on appeal, has Rose challenged the validity of the two convictions, one pursuant to a guilty plea and the other pursuant to a jury verdict. The district court erroneously stated that the adjudication was not automatic and that it


²Compare NRS 207.010(2) (“[t]he trial judge may, at his discretion, dismiss a count under this section”), with NRS 207.012(3) (“[t]he trial judge may not dismiss a count under this section”).

³NRS 207.016(2) provides in part: “A count pursuant to NRS 207.010, 207.012 or 207.014 may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed . . . until 15 days after the separate filing.”

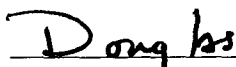
retained the discretion to dismiss the count, and as a result, made particularized findings and specifically addressed the nature and gravity of the prior and instant convictions as required for a habitual criminal adjudication.⁴ Nevertheless, we discern no error in the end result and conclude that the district court did not abuse its discretion in adjudicating Rose as a habitual felon.

Having considered Rose's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Steven P. Elliott, District Judge
Mary Lou Wilson
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴See generally Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).