IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISS LONNIE ROGERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42895

FILED

APR 0 4 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court adjudicated appellant Criss Rogers a habitual felon and sentenced him to two concurrent terms of life imprisonment with the possibility of parole after ten years.

Rogers cites to the dissent in Tanksley v. State[1] and asks this court to review his sentence to see if justice was done. He claims that his adjudication as a habitual felon was based on three felony convictions which were prosecuted in the same information. He contends that given the policy and purpose of the recidivist statute the district court could have treated his multiple felony convictions as a single conviction and treated his stipulation as a stipulation to one felony conviction.[2] And he

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]Rogers quotes Rezin v. State, 95 Nev. 461, 463, 596 P.2d 226, 227 (1979), in which we stated, "By enacting the habitual criminal statute, the legislature sought to discourage repeat offenders and to afford them an opportunity to reform. The statute provides a special, as well as general, deterrent to recidivism."

argues that the district court was so focused on the mandatory provisions of NRS 207.012 that it failed to adequately consider his stipulation.

We have consistently afforded the district court wide discretion in its sentencing decisions, and we have refrained from interfering with the sentence imposed when "the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[3] Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[4]

Rogers has failed to demonstrate that the district court relied on impalpable or highly suspect evidence in adjudicating him a habitual felon. Without objection, the district court received into evidence certified true copies of the charging documents and judgment of conviction from Rogers's previous felonies.[5] These felonies were all prosecuted in the same information. We have previously held that "where two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single 'prior conviction' for purposes of applying the habitual criminal statute."[6] Rogers's previous three convictions resulted

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[3]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[4]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

[5]See NRS 207.016(5) ("a certified copy of a felony conviction is prima facie evidence of [a] conviction of a prior felony").

[6]Rezin, 95 Nev. at 462, 596 P.2d at 227 (emphasis added).

from robberies that he perpetrated in three different bars on three different days and on five different victims. Because these convictions did not arise out of the same act, transaction, or occurrence, they could be used as separate prior convictions for the purposes of applying the habitual criminal statute.

Rogers has also failed to demonstrate that the district court erred in accepting his stipulation. A district court is not prohibited from imposing an adjudication of habitual felon based on a stipulation by the parties.[7] However, the stipulation must satisfy the constitutional requirements of due process.[8] These requirements are met if the defendant admits that he received specific prior convictions and not just that he is a habitual criminal.[9] We conclude that Rogers did more than just stipulate to being a habitual offender.

In his plea memorandum, Rogers stipulated that he was a habitual offender and acknowledged that he had three prior robbery convictions as alleged in the amended indictment. During the plea canvass, Rogers acknowledged that he had read the plea memorandum, he understood the memorandum, and he did not have any questions. During the sentencing hearing, the State discussed Rogers's three prior robbery convictions, and Rogers subsequently admitted their existence, stating, "I know my past. I can't dispute it." In fact, nothing in the record suggests that Rogers has ever disputed the existence or validity of his prior

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[7]NRS 207.016(6).

[8]Hodges v. State, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003).

[9]Id.

convictions. Given these circumstances, we conclude that Rogers effectively stipulated to his prior convictions.

Rogers does not allege that the recidivist statutes are unconstitutional. The sentence imposed was within the parameters provided by the relevant statute.[10] And the sentence is not so unreasonably disproportionate to the crime as to shock the conscience: Rogers admitted that on two separate occasions he robbed people of their money using a deadly weapon and, at the time of sentencing, he had three prior felony convictions. Accordingly, we conclude that the district court did not abuse its discretion when sentencing Rogers.

Having considered Rogers's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

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[10]See NRS 207.012(1)(b)(2) (providing for a prison sentence of life with the possibility of parole after ten years).

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk