

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID HOWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43625

FILED

JAN 20 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny. Second Judicial District Court, Washoe County; James W. Hardesty, Judge. The district court adjudicated appellant David Howell as a habitual criminal and sentenced him to serve a prison term of 10 to 25 years.

Howell's sole contention is that the district court abused its discretion by adjudicating him as a habitual criminal because the sentence is excessive. Howell argues that he is not deserving of habitual criminal status because he is intelligent, articulate, educated, remorseful, amenable to rehabilitation and his lengthy criminal history is solely attributable to a serious drug addiction.¹ We conclude that Howell's contention lacks merit.

The decision to adjudicate a criminal defendant as a habitual criminal is left to the "broadest kind of judicial discretion."² The

¹Howell notes that he attended the University of Nevada, Reno, on an athletic scholarship and "had everything going for him until he became addicted to heroin."

²Tanksley v. State, 113 Nev. 997, 1004, 946 P.2d 148, 152 (1997) (quoting Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993)).

sentencing court "may dismiss a habitual criminal allegation when . . . a habitual criminal adjudication would not serve the purpose of the statute or the interests of justice."³ "Nevada law requires a sentencing court to exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal."⁴ Although it is easier for this court to determine whether the sentencing court exercised its discretion when it makes particularized findings and specifically addresses the nature of the prior convictions, this court has never required such explicit findings.⁵

At the sentencing hearing, the State argued that Howell was a habitual criminal because he had seven prior convictions, four prior grants of parole revoked and that each time he was released from custody, he reoffended. The State quoted the presentence investigation report which concluded: "There does not appear to be much hope that [Howell] can benefit from sanctions imposed and will likely upon release reoffend." The State argued that, in his criminal past, Howell had used eight different aliases, nine dates of birth, and three different social security numbers. Finally, the State discussed the nature of the instant grand larceny charge, explaining that a "cohort" informed Howell that a woman was in a particular casino with a large amount of gambling winnings in her purse. Howell went to the casino, located the woman, and stole her purse containing \$50,000.00. After hearing arguments from counsel and

³Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (emphasis added).


⁴Id. at 333, 996 P.2d at 893.


⁵Id.

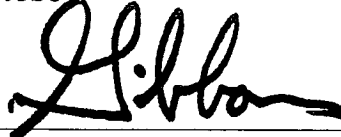
Howell's statement of allocution, the district court adjudicated Howell as a habitual criminal. Although the district court did not make particular findings or address the nature of the prior convictions, the record as a whole indicates that the district court properly exercised its discretion, determining that habitual criminal adjudication would serve the purposes of justice. Accordingly, we conclude the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Gibbons

cc: Hon. Jerome M. Polaha, Chief District Judge
Second Judicial District Court, Department Nine
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk