IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM E. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44708

FILED

JUL 06 2006

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

ORDER OF AFFIRMANCE

This is an appeal of a district court judgment of conviction and sentences, upon a jury verdict, for one count of open or gross lewdness, two counts of misdemeanor battery, two counts of second-degree kidnapping, and one count of assault with a deadly weapon arising out of separate attacks on two women. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge. The district court sentenced appellant William E. Harris to one year in prison on the open or gross lewdness count, concurrent with 180-day sentences imposed on the two misdemeanor battery counts. The district court adjudicated Harris a habitual criminal and imposed three consecutive sentences of life in prison with the possibility of parole after ten years for the two counts of second-degree kidnapping and the assault with a deadly weapon count.

Harris contends that the district court abused its discretion when it adjudicated him a habitual criminal. We disagree and affirm the judgment of conviction and sentences.

06-13976

The district court did not abuse its discretion when it adjudicated Harris a habitual criminal

The district court may sentence a recidivist defendant under NRS 207.010(1)(b)[1] when the State provides the defendant with notice of its intent to seek the habitual criminal sanction and proves the defendant's prior felony convictions beyond a reasonable doubt.[2] The district court may, as it did in this case, impose a sentence of life with the

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[1]NRS 207.010(1)(b) provides that a person convicted of "[a]ny felony, who has previously been three times convicted . . . of any crime which under the laws of the situs of the crime or of this State would amount to a felony . . . is a habitual criminal" and shall be punished by imprisonment for (1) life without the possibility of parole; (2) life with the possibility of parole after serving a minimum of 10 years; or (3) a definite term of 25 years, with parole eligibility after serving a minimum of 10 years. When two or more of the prior convictions were prosecuted in the same information or indictment and arose out of the same act, transaction or occurrence, those several convictions count only as one single prior conviction. Halbower v. State, 96 Nev. 210, 211-12, 606 P.2d 536, 537 (1980).

[2]Hymon v. State, 121 Nev. ___, ___, 111 P.3d 1092, 1103 (2005). A certified copy of the judgment of conviction is prima facie evidence of the prior felony conviction. NRS 207.016(5). Since the certified copies of the West Virginia and Kentucky judgments of conviction appeared valid on their face, adequately identifying Harris as the defendant, and since Harris failed to prove by a preponderance of the evidence that they were "constitutionally infirm," the district court was entitled to rely on them for enhancement purposes. McAnulty v. State, 108 Nev. 179, 181, 826 P.2d 567, 569 (1992), overruled on other grounds by Hodges v. State, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003). Moreover, we detect no procedural defect in the State's filing of the judgments of conviction or the district court's grant of a thirty-minute recess to allow defense counsel to examine the judgments of conviction.

possibility of parole after ten years on each felony count of which Harris was convicted.[3]

Although "[t]he decision to adjudicate a person as a habitual criminal is not an automatic one [and] [h]aving committed three felonies does not, of itself, a habitual criminal make," the district court's decision to sentence a defendant as a habitual criminal under NRS 207.010 is "subject to the broadest kind of judicial discretion."[4] When it sentences a defendant as a habitual criminal, the district court must "clearly disclose that the court weighed the appropriate factors for and against the habitual criminal enhancement and then, in the exercise of discretion, decided to adjudicate [the defendant] as a habitual criminal."[5] NRS 207.010(1)(b) permits habitual criminal adjudication of a person convicted of "[a]ny felony, who has previously been three times convicted . . . of any crime

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[3]NRS 207.010(1)(b)(2).

[4]Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993). We have held habitual criminal enhancement an abuse of discretion where the prior convictions were nonviolent and remote in time. See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990) (stating that a habitual criminal enhancement is an abuse of discretion "'when the prior offenses are stale or trivial, or in other circumstances where an adjudication of habitual criminality would not serve the purposes of the statute or the interests of justice'" (quoting French v. State, 98 Nev. 235, 237, 645 P.2d 440, 441 (1982))). We note that under NRS 207.010(2), "[t]he trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information." In contrast, NRS 207.012, which requires that the district court sentence as a habitual criminal a felon convicted of a violent felony enumerated at NRS 207.012(2) and twice previously convicted of enumerated felonies, expressly prohibits the trial judge from dismissing a count in the indictment. See NRS 207.012(3).

[5]Clark, 109 Nev. at 428, 851 P.2d at 427.

which under the laws of the situs of the crime . . . would amount to a felony." NRS 207.010(1)(b) imposes no requirement that the prior felonies be violent.[6]

Harris's Kentucky and West Virginia convictions for burglary, felony theft, first-degree wanton endangerment, and aggravated robbery are neither remote in time nor trivial. The district court properly exercised its broad discretion by taking into account the nature of Harris's past felonies, his arguments for mitigation, the severity of the attacks on the victims, the psychosexual evaluation, and Harris's refusal to stand accountable for his conduct.[7] Finally, the record provided by the district court adequately disclosed that the district court properly exercised its discretion in determining that habitual criminal adjudication in this case was just and proper.

Harris's remaining assignments of error

Harris's remaining assignments of error lack merit. Because we consider the felony of assault with a deadly weapon under NRS

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[6]See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of the convictions; instead, these are considerations within the discretion of the district court."); Lader v. Warden, 121 Nev. ___, ___, 120 P.3d 1164, 1168 (2005) ("We have previously interpreted the meaning of the phrase 'any felony' in NRS 207.010(1)(a) to be plain and clear and upheld the application of this habitual criminal statute to a broad range of felony convictions." (footnote omitted)). Contrast NRS 207.010(1)(b) with NRS 207.012(2), which permits habitual criminal enhancement of sentences imposed upon felons twice convicted of enumerated violent felonies.

[7]Harris contends that the district court should have considered evidence of his mental illness as a factor mitigating against habitual criminal adjudication. Harris presented no evidence to the district court indicating that he is mentally ill.

200.471(2)(b) a felony independent of misdemeanor assault, we conclude that the district court's imposition of the habitual criminal sentence for Harris's sentence for assault with a deadly weapon conviction did not improperly double-enhance his sentence. Further, we conclude that Harris's statements to LVMPD officers and the evidence presented at trial were sufficient to support the district court's conclusion that the metal bar blocking the tanning salon's rear door constituted a deadly weapon, and the State was under no duty to collect the bar itself and produce it as an exhibit at trial. Finally, we conclude that the district court properly denied Harris's motion for a new trial because it was untimely and lacked merit.

We have considered each of Harris's arguments on appeal and conclude that substantial evidence supports Harris's guilt beyond a reasonable doubt. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Rose

_____, J.
Becker

_____, J.
Maupin

_____, J.
Gibbons

_____, J.
Douglas

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Jessie Elizabeth Walsh, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Goodman Law Firm
Clark County Clerk