IN THE SUPREME COURT OF THE STATE OF NEVADA

GEOFFREY JEROME JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46096

FILED

SEP 14 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Geoffrey Jones was convicted, pursuant to a jury verdict, of two counts of burglary and one count of possession of burglary tools. The district court found Jones a habitual criminal pursuant to NRS 207.010(1) and sentenced him to two concurrent terms of ten to twenty-five years in prison for the burglaries and a concurrent term of one year for possession of burglary tools.

Jones raises two issues on appeal. First, he argues that the district court erred in admitting a recording of a 9-1-1 call over his counsel's objection. Jones contends that this evidence was testimonial in nature and inadmissible pursuant to Crawford v. Washington[1] because the caller did not testify at trial. In Crawford, the United States Supreme Court held that where an out-of-court statement is testimonial in nature, the Sixth Amendment requires declarant unavailability and a prior opportunity to cross-examine prior to its admission. Crawford, however,

[1]541 U.S. 36 (2004).

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did not provide a comprehensive definition of "testimonial," although "it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations."[2] In Davis v. Washington, the Court recently considered the scope of testimonial evidence in two situations, one of which involved the admission of a recording of a 9-1-1 call, and further defined the scope of testimonial and nontestimonial statements made in the course of police interrogations.[3]

Here, the trial transcript indicates that a recording of the 9-1-1 call was played for the jury, but it was not transcribed in the record. Jones did not provide a transcript of it in his appendix. Without reviewing the content of the 9-1-1 call, we are unable to evaluate any application of Crawford and Davis. Jones bears the responsibility of providing an adequate record on appeal.[4] As he has not done so, we conclude that he fails to show that the district abused its discretion in admitting the 9-1-1 recording.[5]

Moreover, even assuming the challenged evidence violated Crawford and Davis, overwhelming evidence supports Jones's convictions, and therefore any error was harmless beyond a reasonable doubt.[6]

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[2]Id. at 68.

[3]___ U.S. ___ 2006 WL 1667285 (U.S. Wash. June 19, 2006).

[4]See Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

[5]See Flores v. State, 121 Nev. ___, ___, 120 P.3d 1170, 1180 (2005).

[6]See Medina v. State, 121 Nev. ___, ___, 131 P.3d 15, 21 (2005); Flores, 121 Nev. at ___, 120 P.3d at 1171.

Jones next contends that his sentence is cruel and unusual under the Eighth Amendment because the prior convictions upon which his habitual criminal adjudication was predicated were nonviolent and remote in time. The State sought a habitual criminal adjudication based on the following prior convictions: a 1986 conviction for grand larceny auto; a 1988 conviction for larceny from a person; a 1988 conviction for attempted possession of stolen property; a 1997 conviction for attempted grand larceny; a 1997 conviction for attempted theft; and a 2001 conviction for coercion.

District courts are afforded wide discretion in sentencing decisions.[7] A sentence within the statutory limit is "not cruel and unusual punishment unless it is so disproportionate to the crime or crimes charged that it shocks the conscience."[8] NRS 207.010(1) "'makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court.'"[9]

Here, in addition to Jones's criminal record and the presentence report, the district court considered Jones's statement and counsel's plea to forgo adjudicating him a habitual criminal. In deciding that such an adjudication was appropriate, the district court commented that Jones's history of 22 arrests and six felony convictions since 1985

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[7]See Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[8]White v. State, 105 Nev. 121, 123, 771 P.2d 152, 153 (1989).

[9]Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996) (quoting Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992)).

reflected that he was a "career criminal." It further noted that Jones committed the current felonies three months after he was dishonorably discharged from his 2001 coercion conviction. The district court also expressed its concern that "the serious nature of the crimes that he's committed has escalated in recent years." We conclude that the district court did not abuse its discretion in sentencing Jones as a habitual criminal under the circumstances of this case.

Having considered Jones's claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Jessie Elizabeth Walsh, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk