

IN THE SUPREME COURT OF THE STATE OF NEVADA


MATTHEW CLAYTON BARCUS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46580

FILED

JUN 08 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of burglary tools and one count of possession of a stolen motor vehicle and adjudication as a habitual criminal. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Matthew Clayton Barcus to a jail term of 12 months for possession of burglary tools and a prison term of 25 years with parole eligibility after 10 years as a habitual criminal.

Barcus contends that his adjudication as a habitual criminal must be reversed because the procedure in place for habitual criminal adjudication violates Apprendi v. New Jersey.<sup>1</sup> This court recently stated in O'Neill v. State, however, that Nevada's habitual criminal statute, NRS 207.010, does not violate Apprendi.<sup>2</sup> In affirming the habitual criminal adjudication in O'Neill, this court expressly distinguished Nevada's

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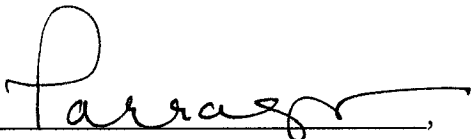
<sup>1</sup>530 U.S. 466 (2000).

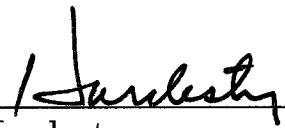
<sup>2</sup>123 Nev. \_\_\_, 153 P.3d 38 (2007).


statutory scheme from the Hawaii scheme at issue in the same case relied upon by Barcus in this appeal.<sup>3</sup>

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

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Hardesty

 J.  
Saitta

cc: Hon. Jerome Polaha, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>3</sup>Id. at \_\_\_, 153 P.3d at 41 (discussing Kaua v. Frank, 436 F.3d 1057, 1062 (9th Cir. 2006), cert. denied \_\_\_ U.S. \_\_\_, 127 S. Ct. 1233 (2007)).