

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DWAYNE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46825

FILED

JUL 06 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny of a motor vehicle. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court adjudicated appellant Michael Dwayne Smith as a habitual criminal and sentenced him to serve a prison term of 5-20 years.¹

Smith's sole contention is that the district court abused its discretion at sentencing by adjudicating him as a habitual criminal. Smith concedes that over a 16-year period he had seven felony convictions, however, he argues that the convictions "were trivial, nonviolent and the product of a long term drug addiction for which he never received treatment." Smith also claims that the district court failed to make any particularized findings prior to his adjudication, and that a prison term of 24-60 months would have been more appropriate. We disagree.

The district court has broad discretion to dismiss a habitual criminal allegation.² Accordingly, the decision to adjudicate an individual

¹See NRS 207.010(1)(a).

²See NRS 207.010(2).

as a habitual criminal is not an automatic one.³ The district court “may dismiss a habitual criminal allegation when the prior convictions are stale or trivial or in other circumstances where a habitual criminal adjudication would not serve the purpose of the statute or the interests of justice.”⁴ The habitual criminal statute, however, “makes no special allowance for non-violent crimes or for the remoteness of [prior] convictions; instead, these are considerations within the discretion of the district court.”⁵ This court explained that “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.”⁶

In the instant case, at a hearing prior to the entry of Smith’s plea, the district court judge informed Smith that the decision whether to adjudicate him as a habitual criminal was “totally” up to the court. During the same discussion, the district court noted that it had the discretion to reject the State’s argument in favor of habitual criminal adjudication and instead sentence Smith pursuant to the one count of grand larceny of a motor vehicle.⁷ At the entry of plea hearing, the district court again informed Smith that the matter of sentencing was up to the court and that the court did not have to follow the plea negotiations. At

³See Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

⁴Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (emphasis added).

⁵Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

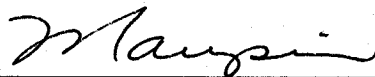
⁶Hughes, 116 Nev. at 333, 996 P.2d at 893.


⁷See NRS 205.228(2); NRS 193.130(2)(c) (category C felony punishable by a prison term of 1-5 years).

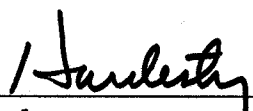
the sentencing hearing, both defense counsel and the prosecutor reminded the district court that the discretion to adjudicate Smith as a habitual criminal remained with the court. Additionally, the State informed the district court that Smith's seven felony convictions involved discharging a firearm, grand larceny of an automobile, possession of a stolen motor vehicle, attempted escape, attempted possession of a stolen motor vehicle, attempted burglary, and robbery. Smith's criminal history also included one gross misdemeanor conviction, seventeen misdemeanor convictions, and numerous failure-to-appears. It was noted that Smith committed the instant offense while on parole. And finally, at the end of the sentencing hearing, the district court stated, "Pursuant to Nevada Revised Statute 207.010, I am declaring that Mr. Smith . . . is an habitual criminal." Therefore, we conclude that the district court understood its sentencing authority and did not abuse its discretion in deciding to adjudicate Smith as a habitual criminal.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Steven R. Kosach, District Judge
Law Offices of John E. Oakes
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk