

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR JOSEPH BREWER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48014

FILED

MAR 06 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court adjudicated appellant Arthur Joseph Brewer as a habitual criminal and sentenced him to serve a prison term of 10 to 25 years.

Brewer contends that the district court abused its discretion at sentencing. Specifically, Brewer argues the sentence constitutes cruel and unusual punishment and is disproportionate to the charged offense given that he committed a nonviolent crime and the stolen property was ultimately returned to the victims. Brewer also contends that the district court erred in adjudicating him as a habitual criminal because his prior offenses were nonviolent and occurred over fifteen years ago, and nothing in the record indicates that the district court weighed the appropriate factors and determined that habitual criminal adjudication was "just and proper." We conclude that the district court did not abuse its discretion at sentencing.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."² Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statutes themselves are constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.³ Finally, the district court has discretion to impose sentence under the habitual criminal statute and may dismiss a habitual criminal allegation where the prior offenses are stale or trivial.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

In the instant case, the sentence imposed was within the parameters provided by the relevant statute.⁶ At the sentencing hearing,

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

³Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

⁴See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

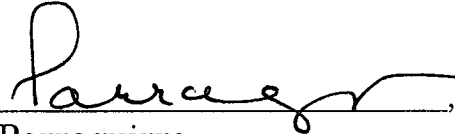
⁵Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

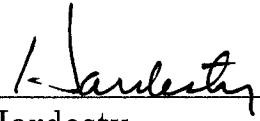
⁶See NRS 207.010(1)(b)(3).

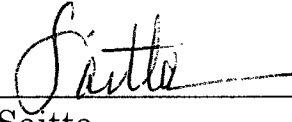
the prosecutor argued that Brewer was a menace to society and noted that, in a prior criminal case, Brewer was adjudicated as a habitual criminal and served a lengthy prison term. In his statement of allocution, Brewer admitted that he had "been a problem to society" since 1984. After hearing arguments from counsel and Brewer's statement of allocution, the district court noted that Brewer had four prior felony convictions for theft offenses and declared him a habitual criminal. Brewer has failed to show that the district court erred or abused its discretion in adjudicating him a habitual criminal, and we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Brewer's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk