

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN WAYNE CRAWLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49769

FILED

MAR 27 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of stop required on signal of a police officer. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court adjudicated appellant Bryan Wayne Crawley as a habitual criminal pursuant to NRS 207.010 and sentenced him to serve a term of life in prison with the possibility of parole after ten years.

First, Crawley argues that the district court improperly adjudicated him a habitual criminal pursuant to NRS 207.010 based on the prosecutor's misrepresentation that our decision in O'Neill v State¹ required such an adjudication. In particular, Crawley challenges the following comment by the prosecutor:

The court may, in its discretion say: Hey this case, they're stale or this case, they're trivial, or there is some overriding manifest interest injustice [sic] that a habitual criminal allegation doesn't apply. But if you read O'Neill, it is clear that you should

¹123 Nev. ___, 153 P.3d 38 (2007).

not be reducing the charge from a large habitual without a valid ground.

....

... [A]nd when the Supreme Court clarified that, I thought the Court should know that that's the sentence unless there's a good reason not to impose it.

NRS 207.010(2) grants the district court the discretion to dismiss a count of habitual criminality. This court considers the entire record in determining whether the district court actually exercised its statutory discretion. If the record "indicates that the sentencing court was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication and that the court exercised its discretion, the sentencing court has met its obligation under Nevada law."² In the context of addressing whether NRS 207.010 and this court's application of that statute violated Apprendi v. New Jersey,³ we reiterated in O'Neill our concern in "ensuring that district courts in such matters are aware of the statutory discretion to dismiss a count of habitual criminality under NRS 207.010."⁴

Considering the challenged argument in context, we conclude that the prosecutor did not misinform the district court respecting the discretionary nature of NRS 207.010 or our conclusions in O'Neill. Further, the district court explained that it could not adjudicate Crawley a

²Hughes v. State, 116 Nev. 327, 333, 996, P.2d 890, 893-94 (2000).

³530 U.S. 466 (2000).

⁴O'Neill, 123 Nev. at ___, 153 P.3d at 43.

habitual criminal “if the prior offenses are stale or trivial.” The district court also recognized that it could exercise discretion and decline to adjudicate Crawley a habitual criminal when such an adjudication “would not serve the purposes of the statute or the interest of justice.”

Based on the submissions before us, we conclude that the district court understood and exercised its discretion pursuant to NRS 207.010. Consequently, we conclude that the district court did not err in adjudicating Crawley a habitual criminal.

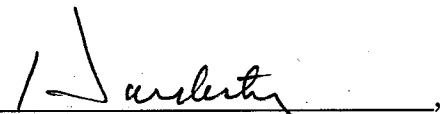
Second, Crawley argues that the State violated his due process rights during sentencing by presenting evidence that he was facing murder, burglary, and robbery charges in an unrelated matter. Defense counsel argued against consideration of this evidence in sentencing Crawley. Crawley contends that the district court’s possible reliance on this unsubstantiated evidence warrants resentencing. However, the record shows that the district court expressly declined to consider evidence of the pending charges, specifically stating that Crawley’s sentence was based “on his prior convictions, the felonies, and the gross misdemeanor, although that’s not a basis for habitual, but I can consider it in total.”⁵ Later during the sentencing hearing, the district court again stressed that it did not consider the pending unrelated charges in sentencing Crawley, stating, “I did not rely on the other case and, quite frankly, that’s why it’s not life without.”

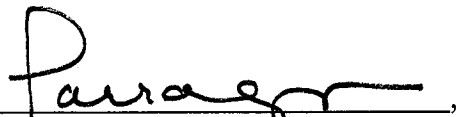
⁵See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (holding that a sentence will not be disturbed on appeal so long as it was not based solely on impalpable or highly suspect evidence).

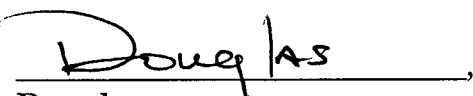
Even assuming the State improperly introduced evidence concerning the unrelated pending charges, we conclude that Crawley's due process rights were not violated as the district court expressly declined to consider the challenged evidence.

Having considered Crawley's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Allen & Dustin, LLC
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk