

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TERRELL HAMPTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49887

FILED

OCT 16 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Anthony Terrell Hampton to serve a term of 28 to 72 months in prison for conspiracy to commit robbery. Hampton was adjudicated a habitual felon and sentenced to a term of life in prison with the possibility of parole after 10 years for robbery with the use of a deadly weapon.

Hampton raises two issues on appeal. He first contends that the charges against him should have been dismissed because his due process rights were violated by a pre-arraignment delay resulting in an unjustified detention. Specifically, he argues that he was arrested on June 3, 2006, but he was not arraigned until ten days later on June 13, 2006. In between his arrest and arraignment, the justice court determined that there was probable cause on June 4, 2006, a first appearance was held on June 5, 2006, and a criminal complaint was filed on June 8, 2006.

Hampton relies on cases regarding determinations of probable cause. The cases Hampton cites stand for the proposition that there must be a judicial determination of probable cause promptly, which the United States Supreme Court has resolved to be within 48 hours of arrest.¹ In this case, Hampton received a judicial determination of probable cause on June 4, 2006, within the time period prescribed by the Supreme Court. Instead, the issue in this case is whether the 10-day delay from arrest to arraignment violated Hampton's due process rights.

The purpose behind requiring an arraignment hearing is to "prevent law enforcement personnel from conducting a 'secret interrogation of persons accused of a crime.'"² Requiring a speedy arraignment ensures that a defendant will be promptly notified of his right against self-incrimination.³ This court has held that "[w]here there has been no interrogation during the delay, and the accused has not confessed or made incriminating statements, the delay has caused no prejudice to the accused, and his rights have not been violated."⁴ Hampton did not make any statements while he was in custody between the time of arrest and arraignment. In addition, he has failed to allege any prejudice resulting from the delay. Therefore, we conclude that the

¹County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991).

²Sheriff v. Berman, 99 Nev. 102, 105-06, 659 P.2d 298, 300 (1983) (quoting Morgan v. Sheriff, 92 Nev. 544, 546, 554 P.2d 733, 734 (1976)).

³Id. at 106, 659 P.2d at 300.

⁴Id.

district court did not err in denying Hampton's motion to dismiss based on the delay between arrest and arraignment.

Next, Hampton argues that the district court erred by adjudicating him a habitual felon pursuant to NRS 207.012. He makes four arguments.

First, Hampton argues that the district court failed to pronounce a sentence regarding his conviction for robbery with a deadly weapon first before adjudicating him a habitual felon, as required by Burns v. State⁵ and Hollander v. State.⁶ Hampton's claim in this regard lacks merit. Burns and Hollander state, "The trial court must sentence on the substantive crime charged . . . , and then invoke the recidivist statute to determine the penalty."⁷ This holding was reinforced in Lisby v. State,⁸ which held that the habitual offender statute does not create a separate substantive crime, but rather is used as a sentencing enhancement for substantive crimes. Here, the district court pronounced Hampton guilty of robbery with the use of a deadly weapon and then invoked the habitual offender statute to determine the penalty, as required by Burns and Hollander. The manner in which the district court conducted sentencing in this case does not implicate the concerns expressed in Burns and Hollander with the habitual criminal felon statute being charged as a

⁵88 Nev. 215, 495 P.2d 602 (1972).

⁶82 Nev. 345, 418 P.2d 802 (1966).

⁷Burns, 88 Nev. at 220, 495 P.2d at 605; Hollander, 82 Nev. at 353, 418 P.2d at 807.

⁸82 Nev. 183, 189, 414 P.2d 592, 596 (1966).

separate substantive crime. Therefore, we conclude that the district court did not err by adjudicating Hampton a habitual felon.

Second, Hampton argues that the district court failed to identify which felony convictions it relied on when it adjudicated Hampton a habitual felon. Hampton argues that some of his prior convictions arose out of the same conduct and therefore should only count as one conviction for the purposes of applying the habitual offender statute.⁹ However, Hampton failed to object at sentencing to the use of these prior felony convictions. Failure to raise an objection in the district court generally precludes appellate consideration of an issue absent plain error affecting substantial rights.¹⁰ Generally, an appellant must show that he was prejudiced by a particular error in order to prove that it affected his substantial rights.¹¹

“[W]here two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single prior conviction for purposes of applying the habitual criminal statute.”¹² Hampton failed to provide the certified copies of the judgments of conviction that were admitted in the district court. By failing to include the certified copies of the judgments or any other supporting documentation, we cannot discern whether these convictions arose out of

⁹Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

¹⁰Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

¹¹Id.

¹²Rezin, 95 Nev. at 462, 596 P.2d at 227.

the same act, transaction or occurrence, and whether they were prosecuted in the same indictment. The burden is on the appellant to provide an adequate record enabling this court to review assignments of error.¹³ Therefore, we conclude that Hampton failed to demonstrate plain error or that any error affected his substantial rights.

Third, Hampton argues that his prior convictions for breaking and entering with intent to commit a felony and breaking and entering from 1984, and his convictions for attempted embezzlement and attempted robbery from 1991, are too remote in time and should not have been considered by the district court.¹⁴ Initially, we note that Hampton has failed to address the proper sentencing statute and mistakenly argues on appeal as if he were adjudicated a habitual criminal pursuant to NRS 207.010, rather than as a habitual felon pursuant to NRS 207.012. Under NRS 207.012, the district court does not have the discretion to dismiss a count under NRS 207.012.¹⁵

Pursuant to NRS 207.016(2), the State filed a notice of habitual felon status and the district court conducted a hearing. When the State has complied with the provisions of NRS 207.012 and NRS 207.016, the district court does not have the discretion to dismiss a count of

¹³Thomas v. State, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004); see also 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).

¹⁴See Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

¹⁵Compare NRS 207.010(2) (“The trial judge may, at his discretion, dismiss a count under this section”), with NRS 207.012(3) (“The trial judge may not dismiss a count under this section.”).

habitual felon. The staleness or remoteness of a particular prior conviction is not considered when a district court imposes an enhancement pursuant to the habitual felon statute. Accordingly, the district court did not err when it considered Hampton's convictions from 1984 and 1991.¹⁶

Finally, Hampton argues that the State did not meet its burden of showing that he either had counsel or validly waived counsel for the prior convictions that the State proffered to support its pursuit of habitual offender status. Hampton failed to include the filed certified copies of the prior judgments of conviction admitted at sentencing or any other documentation indicating that the challenged prior convictions were deficient. As stated above, "[a]ppellant has the ultimate responsibility to provide this court with portions of the record essential to determination of issues raised in appellant's appeal."¹⁷ The State counters that it entered into evidence the certified copies of Hampton's prior judgments of conviction which clearly show that he had counsel or that he validly waived his right to counsel. According to the record and the district court's minutes of the sentencing hearing below, the State filed certified copies of all of Hampton's prior felony judgments of conviction. Based on

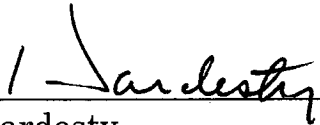
¹⁶It appears from the record before us, that the imposition of the habitual felon statute may have been erroneously applied in this case as Hampton may not have been convicted of a sufficient number of requisite felonies under NRS 207.012(2). However, Hampton has not challenged the habitual felon adjudication on this basis. Therefore, we decline to address the matter at this time.

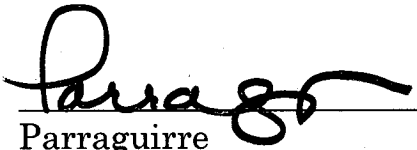
¹⁷Thomas, 120 Nev. at 43 n.4, 83 P.3d at 822 n.4 (2004) (internal quotations omitted) (quoting NRAP 30(b)(3)).

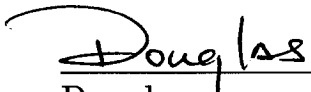
the record before us, we conclude that the State met its burden in this regard.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Jones Vargas/Las Vegas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk