

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK WILLIAM ADKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51160

FILED

DEC 11 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, entered pursuant to a guilty plea, of one count each of stop required on signal of a peace officer (Count I), assault (Count II), battery (Count III), false imprisonment (Count IV), unlawful taking of a vehicle (Count V), and intimidating a witness (Count VI). Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. The district court adjudicated appellant Frederick William Adkins a habitual criminal and sentenced him to serve two consecutive prison terms of 10 to 25 years for Counts I and VI. On the remaining four counts, the district court sentenced Adkins to serve two concurrent terms of six months in jail with credit for six months of time served and two concurrent terms of 282 days in jail with credit for 282 days of time served. On appeal, Adkins raises two issues for our review.

First, Adkins contends that the district court abused its discretion in denying his presentence motion to withdraw the guilty plea. Adkins argues that during the plea canvass, the district court failed to advise him about the elements of each of the six offenses, read the amended information into the record, or ask if he had read the amended

information. Adkins contends that the judgment of conviction should be set aside on this basis. We disagree.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.¹ In order to show that the district court abused its discretion in denying a motion to withdraw a guilty plea, a defendant must prove that the totality of the circumstances indicate that the plea was not entered knowingly, voluntarily, and intelligently.² “On appeal from a district court's denial of a motion to withdraw a guilty plea, this court ‘will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.’”³

In this case, the totality of the circumstances indicate that Adkins entered a knowing, voluntary, and intelligent guilty plea. Adkins signed a written plea agreement and was thoroughly canvassed by the district court. Although the district court did not specifically address the elements of the offenses during the plea canvass, Adkins does not claim that he was unaware of the elements or that he misunderstood the charges against him. In fact, Adkins did not present this claim to the district court. Rather, at the hearing on the motion, Adkins admitted to

¹State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

²Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

³Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

committing the offenses and advised the district court that he was less concerned about withdrawing his plea and more interested in reforming the plea agreement to include a recommendation for a lesser sentence. Under these circumstances, we conclude that the district court did not abuse its discretion in denying Adkins' presentence motion to withdraw the guilty plea.

Second, Adkins contends that the district court abused its discretion in adjudicating him a habitual criminal, citing to NRS 207.010(2), which gives the district court discretion to dismiss a count brought under the habitual criminal statute. Adkins argues, in the alternative, that the district court abused its discretion in imposing consecutive sentences for Counts I and VI, or in imposing sentences under the large rather than the small habitual criminal statute.

This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ We 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."⁵ The district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the

⁴Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

crime, but also the individual defendant.”⁶ Further, the district court has discretion to impose consecutive sentences.⁷

The district court also has broad discretion to dismiss a habitual criminal count.⁸ Accordingly, the decision to adjudicate an individual as a habitual criminal is not an automatic one.⁹ “[T]he 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.”¹⁰ 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.”¹¹ This court has 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.”¹²

⁶Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); see also NRS 176.015(6).

⁷NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967).

⁸See NRS 207.010(2).

⁹See Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

¹⁰Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (emphasis added).

¹¹Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

¹²Hughes, 116 Nev. at 333, 996 P.2d at 893.


We conclude that the district court did not abuse its discretion in adjudicating Adkins a habitual criminal. The district court properly considered that Adkins had seven felony convictions in the preceding twelve years that were neither stale nor trivial, and which included grand theft, attempted robbery, and aggravated assault on a law enforcement officer. Moreover, the record shows that the district court judge clearly understood his sentencing authority when he stated that he had thoroughly considered the issue and that he was exercising his discretion in adjudicating Adkins a habitual criminal.


We further conclude that the district court did not abuse its discretion in imposing consecutive sentences under the large habitual criminal statute. In the guilty plea memorandum, Adkins agreed to habitual criminal treatment under NRS 207.010(1)(b)(3), which provides for a prison term of 10 to 25 years for each felony conviction. Adkins also acknowledged the State's intent to recommend consecutive sentences for Counts I and VI, and the district court's authority to impose either concurrent or consecutive sentences.


Moreover, the district court properly considered the dangerous nature of Adkins' conduct in the underlying offenses. In particular, Adkins led peace officers on a car chase reaching speeds in excess of 135 miles per hour with four passengers in his car, including a one-year-old child. Then, while in jail, Adkins made threatening telephone calls to several witnesses and violently attacked officers. Adkins does not allege that the district court relied on any impalpable or highly suspect evidence. Accordingly, based on the record before us, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

cc: Hon. Robert W. Lane, District Judge
Gibson & Kuehn
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk