

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE RAYMOND VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51254

FILED

JUN 04 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a corrected judgment of conviction, pursuant to a jury verdict, of one count of possession of stolen property and three counts of possession of a forged instrument. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Jesse Raymond Voss was adjudicated a habitual criminal and sentenced to a single term of life in prison with the possibility of parole after 10 years. Upon appeal, this court held that the judgment of conviction was illegal because it failed to identify to which count the enhanced sentence applied, and it failed to sentence Voss to a definite term for the other three counts of which he was convicted. Voss v. State, Docket No. 45046 (Corrected Order Affirming in Part, and Remanding in Part, June 7, 2007).¹ We remanded the case for

¹This court had initially directed the district court to impose the habitual criminal enhancement on each count for which Voss was convicted. Voss, Docket No. 45046 (Order Affirming and Remanding, March 28, 2007). We corrected this statement so that the district court would know that it may, but did not have to, impose habitual criminal enhancements on the remaining counts.

resentencing and instructed the district court that, while it was “not required to impose the enhanced sentence for each count,” it must “specify the count that it originally intended to enhance with the habitual criminal sentence and determine the appropriate sentence for each of the remaining counts,” as required by NRS 176.033(1)(b). Id.

On remand, no new sentencing information was provided to the district court at the sentencing hearing,² and the district court clarified in a corrected judgment that the habitual criminal enhancement of life in prison with the possibility of parole applied to the count of possession of stolen property. The district court also sentenced Voss to three concurrent terms of 12 to 48 months for the remaining three counts.

Voss appeals from the corrected judgment. His claim on appeal is that the district court abused its discretion in adjudicating him a “large” habitual criminal and imposing a term of life in prison with the possibility of parole instead of as a “small” habitual criminal with a term somewhere between 5 and 20 years.³ We hold that the district court did not abuse its discretion.

²Voss filed a handwritten statement on December 12, 2007, with the district court, but the letter essentially repeats information presented to the district court at the first sentencing hearing either orally by Voss and defense counsel or in Voss’s statement attached to the presentence investigation report.

³Voss argues in passing that the district court abused its discretion in adjudicating him a habitual criminal at the original sentencing hearing; however, that argument is never developed in his opening brief. To the extent Voss argues this point, we note that we held in the appeal of the original judgment that the district court did not err in adjudicating him a habitual criminal. Any argument to the contrary is therefore unavailing.

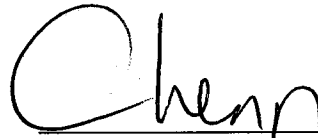
Absent a showing that the district court abused its discretion, we will uphold its sentencing decisions. Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994). Once a defendant is adjudicated a habitual criminal pursuant to NRS 207.010(1), the sentencing court has discretion as to what sentence it will impose within the range prescribed. O'Neill v. State, 123 Nev. 9, 16-17, 153 P.3d 38, 43 (2007), cert. denied, ___ U.S. ___, 128 S. Ct. 153 (2007). When a sentencing court imposes a sentence within the statutory limits, it will only be shown to have abused its discretion if it relied on "impalpable or highly suspect evidence." State v. District Court, 100 Nev. 90, 111, 677 P.2d 1044, 1058 (1984) (quoting Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978)).


Voss's sentence as a habitual criminal was within the statutory limits. Further, the record does not demonstrate that, in affirming its intent to impose a life sentence instead of Voss's desired term of between 5 and 20 years, the district court considered any facts supported only by impalpable or highly suspect evidence. The district court therefore did not abuse its discretion, and Voss is not entitled to a new sentence.

Moreover, this court's order remanding the case did not mandate an entirely new sentencing hearing, but rather ordered clarification of the district court's intent so that the form of the judgment of conviction could be corrected to comport with statutory requirements. The district court specifically recognized this directive and clarified that it intended Voss to serve a life sentence with a possibility of parole as to possession of stolen property and lesser, concurrent sentences for the remaining counts.

The district court, in following this court's instructions on remand to clarify its intent and correct the flawed judgment, did not abuse its discretion in imposing an enhanced life sentence for the count of possession of stolen property. We therefore

ORDER the corrected judgment of conviction AFFIRMED.⁴


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴On March 27, 2009, this court filed Voss's proper person motion for leave to file proper person supplemental opening brief as well as an order denying motion. Voss thereafter submitted in proper person a petition for rehearing of that order. We deny any and all relief requested in the petition for rehearing received April 7, 2009, and direct Voss to proceed through counsel. We further direct the clerk of this court to return, unfiled, Voss's proper person petition.