

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN THORPE CHRISTIE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51317

**FILED**

MAR 04 2009

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 two counts of grand larceny.<sup>1</sup> Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court adjudicated appellant John Thorpe Christie as a habitual criminal and sentenced him to serve two concurrent terms of life in prison with the possibility of parole after 10 years. In this appeal from the judgment of conviction, Christie raises three issues.

First, Christie argues that the district court erred by allowing the State to withdraw from the original plea agreement after he failed to appear for sentencing. In particular, Christie claims that he was not advised that his failure to appear for sentencing would be considered a

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<sup>1</sup>The State represents that the judgment of conviction contains a clerical error in that Christie pleaded guilty to and was convicted of one count each of grand larceny and burglary rather than two counts of grand larceny. After this court issues its remittitur, the State may seek correction of the judgment of conviction in the district court. See NRS 176.565 ("Clerical mistakes in judgments . . . may be corrected by the court at any time and after such notice, if any, as the court orders.").

breach of the plea agreement. We conclude that this claim lacks merit. The original plea agreement clearly provided that the State could withdraw from the agreement and proceed on the original charges if Christie failed “to appear at any scheduled proceeding in this matter.” Christie signed the agreement, which also stated that he understood that his failure to appear at any scheduled proceeding would constitute “a material breach” of the plea agreement. At the plea canvass, Christie further informed the court that he had read and understood the plea agreement and had no questions about it. And it is clear from the record that Christie breached the plea agreement—he failed to appear for the scheduled sentencing hearing. Under the circumstances, Christie cannot demonstrate error in the district court allowing the State to withdraw from the original plea agreement.

Second, Christie claims that the district court abused its discretion in declining to dismiss the habitual criminal allegation on the ground that his prior convictions were nonviolent and therefore did not warrant habitual criminal adjudication. We disagree. As we have recognized, in deciding whether to exercise its discretion to dismiss a habitual criminal allegation, the district court “may consider facts such as a defendant’s criminal history, mitigation evidence, victim impact statements and the like.” O’Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007), cert. denied, 128 S. Ct. 153 (2007); see also Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (“NRS 207:010 makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court.”). Here, the district court admitted evidence of four prior felony convictions. And in declining to dismiss the habitual criminal allegation,

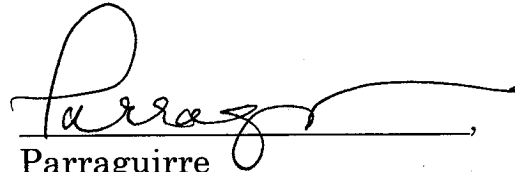
the district court judge, who was familiar with Christie and his prior criminal history, observed that she had considered “all the factors possible in mitigation and . . . the prior chances that [Christie had] had, the prior lectures that [Christie had] had, the prior chances from the State as well as [his] prior probation and parole terms” and determined that habitual criminal adjudication “will serve the purpose of discouraging [Christie] as a repeat offender.” The record, thus, clearly demonstrates that the district court considered the relevant facts and did not abuse its discretion in declining to dismiss the habitual criminal allegation.

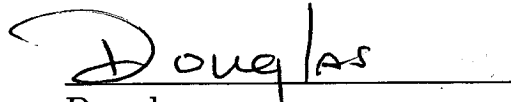
Finally, Christie argues that the life sentence is excessive. We disagree. This court has consistently afforded the district court wide discretion in its sentencing decision, see, e.g., Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and we therefore will refrain from interfering with the 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.” Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, regardless of its severity, a sentence that is within the statutory limits is not “cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” Blume 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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994). Here, Christie does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note

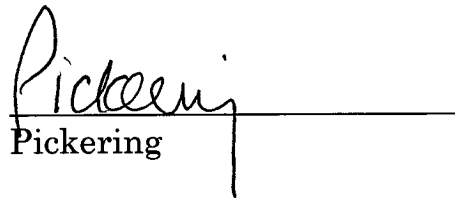
that the sentence imposed was within the parameters provided by the relevant statute. See NRS 207.010(1)(b).

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

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Connie J. Steinheimer, District Judge  
Law Office of Thomas L. Qualls, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk