

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY ALLEN HATFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51719

FILED

FEB 11 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 jury verdict, of one count of battery with the use of a deadly weapon. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. The district court adjudicated appellant Gregory Allen Hatfield as a habitual criminal and sentenced him to serve a prison term of 10-25 years and ordered him to pay \$27,051.23 in restitution.

Hatfield contends that the district court abused its discretion at sentencing by adjudicating him as a habitual criminal pursuant to NRS 207.010. Additionally, Hatfield claims the district court abused its discretion "by imposing consecutive habitual criminal sentences" pursuant to both the deadly weapon enhancement statute, NRS 193.165, and NRS 207.010. We disagree.

The district court has broad discretion to dismiss a habitual criminal allegation. See NRS 207.010(2); O'Neill v. State, 123 Nev. 9, 12, 153 P.3d 38, 40, cert. denied, ___ U.S. ___, 128 S. Ct. 153 (2007). The decision to adjudicate an individual as a habitual criminal, however, is not an automatic one. See Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993). The district court "may dismiss a habitual criminal allegation

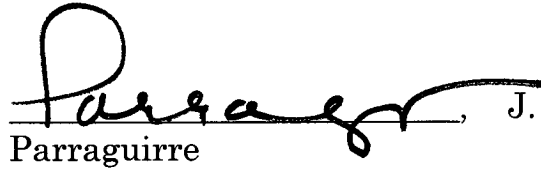
when the prior convictions are stale or trivial or in other circumstances where a habitual criminal adjudication would not serve the purpose of the statute or the interests of justice.” Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (emphasis added). The habitual criminal statute, however, “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.” Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). This court 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.” Hughes, 116 Nev. at 333, 996 P.2d at 893; see also O’Neill, 123 Nev. at 15-16, 153 P.3d at 42-43 (holding that once a district court has declined to exercise its discretion to dismiss an allegation of habitual criminality, the only factual findings the district judge may then make must relate solely to the existence and validity of the prior convictions).

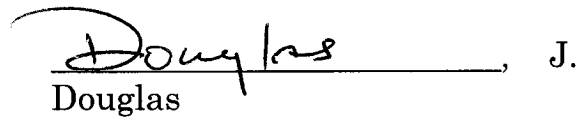
Initially, we note that despite Hatfield’s assertion to the contrary, the district court did not impose consecutive sentences or apply the deadly weapon sentence enhancement pursuant to NRS 193.165. Rather, the district court adjudicated Hatfield as a habitual criminal and sentenced him to a single prison term of 10-25 years pursuant to NRS 207.010(1)(b)(3). Additionally, Hatfield provides no argument in support of his contention that the district court abused its discretion by failing to dismiss the habitual criminal count. Further, our review of the sentencing transcript reveals that the district court understood its sentencing authority and the discretionary nature of habitual criminal adjudication. And prior to making its determination not to dismiss the habitual criminal

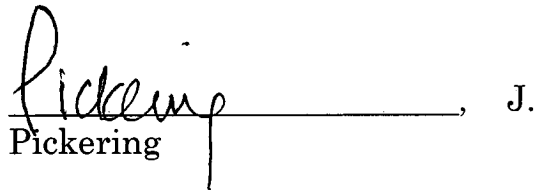
allegation, the district court noted that Hatfield's extensive criminal history included 19 misdemeanor and 6 felony convictions. Therefore, we conclude that the district court did not abuse its discretion in deciding to adjudicate Hatfield as a habitual criminal.

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

ORDER the judgment of conviction AFFIRMED.


Parraguirre


Douglas


Pickering

cc: Hon. Robert W. Lane, District Judge
Nye County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County District Attorney/Tonopah
Nye County Clerk