

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY LEE WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34778

FILED

AUG 28 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of being an ex-felon in possession of a firearm. The district court adjudged appellant Danny Lee Williams a habitual criminal and sentenced him to serve a prison term of life with the possibility of parole in 10 years.

Williams first contends that the district court abused its discretion in denying his presentence motion to withdraw his plea. Specifically, Williams argues that when he pleaded guilty, he was under the influence of medication that adversely affected his ability to enter a knowing and voluntary plea. Additionally, Williams argues that the district court conducted an insufficient plea canvass to determine whether he was competent to plead guilty. We disagree.

The district court may grant a defendant's presentence motion to withdraw a guilty plea for any substantial reason that is fair and just.¹

¹NRS 176.165; State v. District Court, 85 Nev. 381, 455 P.2d 923 (1969).

A defendant seeking to withdraw his plea has the burden to show that his guilty plea was not entered knowingly and intelligently.² To determine if a guilty plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.³

A guilty plea is valid if the defendant was competent to enter the plea and the plea was knowing and voluntary.⁴ A defendant is competent to enter a plea if he has: (1) "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"; and (2) "a rational as well as factual understanding of the proceedings against him."⁵ A plea is knowing and voluntary if it is not coerced, and the defendant actually understands the direct consequences of his plea.⁶

In the instant case, during the plea canvass at Williams' arraignment on April 1, 1999, the district court questioned Williams as to whether he was under the influence of any medication. Williams responded that he was taking medication to help him sleep. Upon further inquiry by the district court, Williams stated that he had taken the

²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

³Id. at 271, 721 P.2d at 367.

⁴Godinez v. Moran, 509 U.S. 389, 400-01 (1993).

⁵Id. at 396 (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

⁶Id. at 401 n.12.

medication earlier in the morning and that he did not believe it impaired his ability to understand his rights or the elements of the offenses.

At the evidentiary hearing on the motion to withdraw, Dr. Ole Thienhaus testified that he prescribed the antidepressant Doxepin, which has sedating side effects. Thienhaus testified that Williams never appeared to be delusional and that Doxepin does not induce delusions. Thienhaus also testified that, in the dosages that Williams was taking, Doxepin would not impair a person's cognitive abilities and would not make a person unusually compliant or passive.

A nurse at the detention facility, Debra Kononchuk, also testified regarding her observations of Williams on the day of the arraignment. Kononchuk explained that, although she had noted Williams had "delusional" thought processes, Kononchuk had placed a question mark next to her notation because she believed that Williams was not really delusional and was just trying to manipulate her. Kononchuk also testified that Williams did not have any cognitive difficulties understanding her questions and responded appropriately during the evaluation.

Based on our review of the record, we conclude that Williams cannot demonstrate that the district court abused its discretion in denying Williams' motion to withdraw the guilty plea. The record reveals that Williams informed the district court, at the plea canvass, that the medication he was taking did not impair his ability to understand the proceedings. Additionally, the testimony presented at the evidentiary hearing indicates that the medication Williams was taking at the time he

entered his guilty plea would not have affected his cognitive abilities. Accordingly, we conclude that Williams failed to demonstrate that he was not competent to enter the guilty plea or that his plea was not knowing and voluntary.

Williams next contends that the district court abused its discretion in adjudging him a habitual criminal because the sentence is excessive, constitutes cruel and unusual punishment, and is disproportionate to his past crimes, which were non-violent property crimes. We conclude the district court did not abuse its discretion in adjudging Williams a habitual criminal.

This court has consistently afforded the district court wide discretion in its sentencing decision.⁷ This court 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."⁸ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statutes themselves are constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.⁹ Finally, the district court has discretion to

⁷See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁸Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁹Blume 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)).

impose sentence under the habitual criminal statute and may dismiss a habitual criminal allegation where the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or 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

In the instant case, Williams has not demonstrated that the district court abused its discretion in adjudicating him a habitual criminal. The sentence imposed was within the parameters provided by the relevant statute.¹² Moreover, after considering the totality of the circumstances, the district court ruled that Williams was eligible for habitual criminal adjudication and found that it was just and proper to adjudge Williams a habitual criminal in light of his prior criminal history. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Finally, Williams contends that the district court abused its discretion in relying on his prior convictions for carrying a concealed weapon to adjudge Williams a habitual criminal because those convictions

¹⁰Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

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

¹²See NRS 207.010(1)(b)(2).

were invalid.¹³ Specifically, Williams contends that his two prior California misdemeanor convictions for carrying a concealed weapon, which were used to enhance his third misdemeanor conviction for carrying a concealed weapon to a felony, were constitutionally infirm. We conclude that Williams' contention lacks merit.

We first conclude that Williams waived his right to argue that he was ineligible for habitual offender treatment when counsel for Williams conceded the issue at sentencing.¹⁴ Indeed, at sentencing, Williams' counsel stated: "In the continuation for justice, I think the court can legally take into consideration what is standing before you as far as the possible sentencing ranges."

Nonetheless, even excluding the convictions alleged to be invalid, the State proffered evidence of three other felony convictions sufficient to satisfy the requirements of NRS 207.010(1)(b)(2) and, at sentencing, Williams' counsel did not object or argue that those convictions

¹³In a related argument, Williams contends that his felony conviction for carrying a concealed weapon is invalid because his two prior misdemeanor convictions for carrying a concealed weapon were constitutionally infirm. We need not address this contention. Williams has waived the issue by failing to raise it in his direct appeal from the judgment of conviction for felony carrying a concealed weapon. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

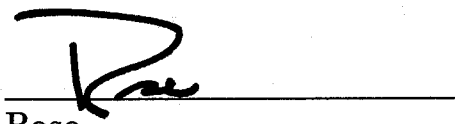
¹⁴See generally McCall v. State, 97 Nev. 514, 516, 634 P.2d 1210, 1212 (1981) (holding that inconsistent theories different from those raised below will not be considered).


were constitutionally infirm. After reviewing the State's evidence, the district court found that Williams had four prior valid felony convictions: in 1988, 1989, 1993, and 1996, which were constitutionally valid. Accordingly, the district court's ruling that Williams was eligible for habitual criminal status was not erroneous, even excluding Williams' convictions for carrying a concealed weapon, because appellant had sufficient prior felony convictions to satisfy NRS 207.010.

Having considered Williams' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Shearing

 _____, J.
Rose

 _____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk