

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD CLIFFORD MCINTYRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52988

FILED

SEP 03 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of burglary. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court adjudicated appellant Richard Clifford McIntyre a habitual criminal and sentenced him to serve two concurrent terms of life in prison with the possibility of parole after ten years.

McIntyre's sole contention on appeal is 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.

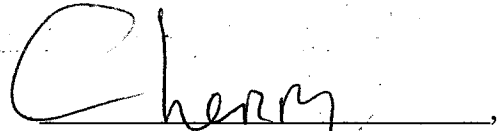
The district court has the discretion to dismiss a count of habitual criminality, NRS 207.010(2); O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007), cert. denied, ___ U.S. ___, 128 S. Ct. 153 (2007), and "[t]he decision to adjudicate a person as a habitual criminal is not an automatic one." Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993). 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

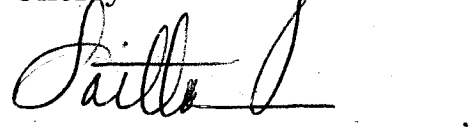
statements and the like.” O’Neill, 123 Nev. at 16, 153 P.3d at 43. We have stated that “it may be an abuse of discretion for the court to enter a habitual criminal adjudication when the convictions used to support the adjudication are nonviolent and remote in time.” Clark, 109 Nev. at 428, 851 P.2d at 427. However, Nevada law does not preclude consideration of such convictions when making a habitual criminal determination. “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.” Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). “Thus, as long as the record as a whole indicates that the sentencing court was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication and that the court exercised its discretion, the sentencing court has met its obligation under Nevada law.” O’Neill, 123 Nev. at 16, 153 P.3d at 43 (quoting Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000)).

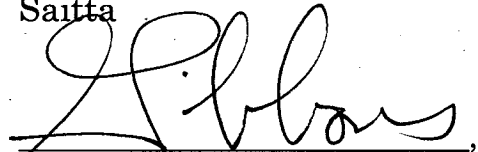
Here, the district court received evidence of three prior felony convictions. In declining to dismiss the habitual criminal allegation, the district court observed that it had “considered the record in its entirety” and found that application of the habitual offender punishment to McIntyre was “just and proper.” The court recognized that McIntyre had a “very lengthy criminal history,” was “a serial habitual offender who will destroy businesses, destroy lives,” and that the habitual criminal “statute was designed specifically for offenders such as [McIntyre].” Because the record indicates that the district court properly exercised its discretion in adjudicating McIntyre a habitual criminal, we conclude that this claim lacks merit.

Having considered McIntyre's contention and concluding that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Washoe County Alternate Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk