

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROOSEVELT ARRINGTON A/K/A
ROOSEVELT GIBSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53412

FILED

FEB 03 2010

TRACIA K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford plea, of battery with a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Roosevelt Arrington challenges his adjudication and sentence as a habitual criminal, arguing that NRS 207.010 is unconstitutional, the district court erred in adjudicating him a habitual criminal, and the sentence is unconstitutional. We review his constitutional claims de novo, Grey v. State, 124 Nev. 110, 117, 178 P.3d 154, 159 (2008), and his challenges to the district court's sentencing decision for an abuse of discretion, Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

Arrington's constitutional challenges to NRS 207.010 lack merit. First, Arrington has not demonstrated that the State's decision to include a habitual criminal allegation was based on an impermissible standard such as race, religion or some other arbitrary classification, and therefore, his equal-protection challenge fails. Hollander v. Warden, 86

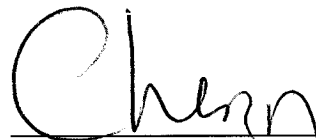
Nev. 369, 373-74, 468 P.2d 990, 992 (1970). Second, Arrington's double-jeopardy challenge to the statute fails because NRS 207.010 allows for an increased sentence on the charged offense for recidivists, not an additional punishment for the prior offense. See Carr v. State, 96 Nev. 936, 940, 620 P.2d 869, 871 (1980) (explaining that NRS 207.010 does not charge substantive offense but allows averment of fact that goes to punishment for charged offense); Hollander, 86 Nev. at 373, 468 P.2d at 992 (explaining that defendant was not being punished for prior conviction but for primary charged offense, with prior conviction being used under NRS 207.010 to enhance punishment for primary offense). Finally, NRS 207.010 does not violate the Cruel and Unusual Punishment and the Due Process Clauses by subjecting persons to criminal prosecution based upon their "status" because the statute does not charge a substantive offense. Carr, 96 Nev. at 940, 620 P.2d at 871.


Arrington's challenges to the district court's decision to adjudicate him as a habitual criminal also lack merit. First, the district court did not rely on Arrington's prior misdemeanor convictions in violation of NRS 207.010. Rather, the court relied on Arrington's prior felony convictions for the adjudication, considering his prior misdemeanor convictions in refusing to dismiss the habitual criminal allegation. See NRS 207.010(2) (district court has discretion to dismiss habitual criminal count); O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007) (district court may consider facts such as defendant's criminal history in determining whether to dismiss habitual criminal count). Second, NRS 207.010 makes no special allowance for stale convictions; this is a consideration within the district court's discretion. Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Although some of the prior

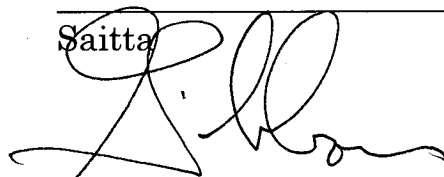
convictions were more than 30 years old, appellant had at least one recent conviction, and some of the prior convictions involved violence. Under the circumstances, the district court did not abuse its discretion in determining that habitual criminal adjudication was appropriate.

Arrington's constitutional challenge to the 10-25 year sentence also lacks merit. The sentencing statute is constitutional and the sentence imposed is within the statutory limits, NRS 207.010(1)(b), and is not grossly disproportionate to the offense such that it shocks the conscience. See Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

Having determined that Arrington's claims lack merit, we ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk