

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MANOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54117

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Anderson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of burglary and one count each of robbery and robbery of a victim 60 years of age or older. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

First, appellant John Manor contends that insufficient evidence was adduced to support the jury's verdict. Manor's claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 727 (2008). Trial testimony indicated that Manor robbed separate 7-Elevens on consecutive nights. Both of the victims, including a cashier over 60 years of age, identified Manor as the perpetrator and testified that they feared for their safety due to Manor's behavior and words. Photographs and a surveillance videotape of Manor committing the robberies were admitted at trial. An investigating officer testified that Manor identified himself as the individual in a photograph depicting one of the robberies. It was for the jury to determine the weight and credibility to give conflicting

testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See NRS 205.060(1); NRS 200.380(1); NRS 193.167(1)(f); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Second, Manor contends that the district court erred by providing "ambiguous" jury instructions on lesser included offenses (instruction 10) and larceny from the person (instruction 11). Manor did not object to the instructions and has failed to demonstrate reversible plain error entitling him to relief. See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (when conducting plain error review, "the burden is on the defendant to show actual prejudice or a miscarriage of justice").

Third, Manor contends that his right to conflict-free counsel was violated because his retained counsel in the instant case represented the State at his sentencing hearing after a robbery conviction in 1999. To show a Sixth Amendment violation of the right to counsel, Manor must demonstrate both an actual conflict and an adverse effect on counsel's performance. See Cuyler v. Sullivan, 446 U.S. 335, 348 (1980). "In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)). Here, Manor failed to allege that counsel actively represented conflicting interests or demonstrate that an actual conflict of interest adversely affected his performance. Therefore, we conclude that Manor's contention is without merit.

Fourth, Manor contends that the district court abused its discretion at sentencing by adjudicating him as a habitual criminal. 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 (2007). Our review of the record reveals that the district court understood its sentencing authority and considered the appropriate factors prior to making its determination not to dismiss the habitual criminal allegation. See Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000) ("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."). Therefore, we conclude that the district court did not abuse its discretion by deciding to adjudicate Manor as a habitual criminal.

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

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Abbi Silver, District Judge
Amesbury & Schutt
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk