

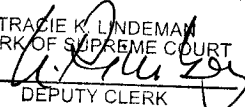
IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP BRYON ASHDOWN A/K/A
PHILLIP BYRON ASHDOWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54264

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to appellant Phillip Bryon Ashdown's guilty pleas to possession of a document or personal identifying information to establish a false status or identity and possession of a forged instrument and pursuant to a jury verdict of burglary and uttering a forged instrument. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Ashdown contends that his constitutional right to a speedy trial, his statutory right to a timely preliminary hearing, and his due process rights were violated. "[T]o trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay." Meegan v. State, 114 Nev. 1150, 1153, 968 P.2d 292, 294 (1998) (internal quotation marks omitted), clarified on other grounds by Vanisi v. State, 117 Nev. 330, 341, 22 P.3d 1164, 1171-72 (2001); see also Barker v. Wingo, 407 U.S. 514, 530 (1972) (establishing a four-part weigh test to determine whether a defendant's right to a speedy trial was violated). We conclude that the 160-day delay in Ashdown's case is not presumptively

prejudicial. A defendant who has been denied a timely preliminary hearing is not entitled to relief, following a conviction, unless he demonstrates that the delay prejudiced the defense, see Bushnell v. State, 97 Nev. 591, 593, 637 P.2d 529, 530 (1981), and we conclude that Ashdown has not shown that he was prejudiced by the delay. Finally, Ashdown's due process rights were not violated by the appointment of four different public defenders; he threatened or victimized three of them and, as a result, they were replaced to avoid conflicts of interest. Under these circumstances, we conclude that Ashdown is not entitled to relief.

Second, Ashdown contends that the district court improperly admitted evidence of his DMV records without an adequate foundation because the police evidence technician who identified the records was not a custodian of records. Ashdown cites to NRS 51.135, which provides an exception to the hearsay rule for records of regularly conducted activities. "A district court's decision to admit or exclude evidence rests within its sound discretion and will not be disturbed unless it is manifestly wrong." Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999). The record on appeal reveals only that the evidence contained a photograph, a signature, and a date and that the evidence technician testified that the signature appeared to be the same as the signature on the evidence release form and the photograph was a likeness of Ashdown. Under these circumstances, we conclude that Ashdown has not demonstrated that the evidence constituted inadmissible hearsay or that the district court's decision to admit the evidence was manifestly wrong. See NRS 51.035 (defining hearsay).

Third, Ashdown contends that the State improperly introduced evidence of his incarceration in the Washoe County Jail

through recorded telephone conversations and improperly used these recordings to impeach his alibi witness. The burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error asserted on appeal. Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). Although Ashdown objected to the admission of the recorded telephone conversations, he did not identify the grounds for his objection, the bench conference that followed was not recorded, and the recorded telephone conversations have not been included as part of the record on appeal. Accordingly, Ashdown has failed to provide an adequate record for our review, and we conclude that he has not overcome the presumption that the district court properly ruled on his objection. Cf., Lee v. Sheriff, 85 Nev. 379, 380-81, 455 P.2d 623, 624 (1969).

Having considered Ashdown's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk