IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN CHARLES COLEMAN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 54324

FILED
MAR 11 2010
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of eluding a police officer and possession of a controlled substance. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. Appellant raises three issues on appeal.

First, appellant challenges the sufficiency of the evidence on the grounds that the State failed to prove that (1) a sufficient quantity and quality of cocaine was recovered and (2) appellant exercised dominion and control over the cocaine. The evidence shows that after a brief high speed chase with the police, appellant exited his vehicle but refused to comply with a police officer's commands to facilitate apprehension. Instead, appellant turned his back to the police officer and "started digging into his right coat pocket with his hands." After appellant was apprehended, two small rocks of cocaine, weighing .37 grams, were found where he was standing.

To sustain a conviction for possession, NRS 453.570 requires that the controlled substance be of an "amount necessary for identification as a controlled substance." Possession may be imputed to appellant

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because it was found in a location that was immediately and exclusively accessible to him. See Marshall v. State, 110 Nev. 1328, 1332-33, 885 P.2d 603, 606 (1994); Glispey v. Sheriff, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973). We conclude that a rational juror could find appellant guilty of possession of a controlled substance. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

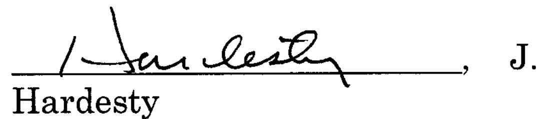
Second, appellant contends that the district court erred by admitting drug paraphernalia (a glass pipe) recovered during a post-arrest search. After a hearing, the district court concluded that the evidence was relevant to show knowledge of drug activity, proved by clear and convincing evidence, and was not unduly prejudicial. See Tinch v. State, 113 Nev. 1170, 1175-76, 946 P.2d 1061, 1064-65 (1997). And the district court provided a limiting instruction when the evidence was introduced. Based on the record before us, we conclude that the district court did not abuse its discretion by admitting this evidence. See Phillips v. State, 121 Nev. 591, 601, 119 P.3d 711, 718 (2005), receded from on other grounds by Cortinas v. State, 124 Nev. ___, 195 P.3d 315 (2008), cert. denied, ___ U.S. ___, 130 S. Ct. 416 (2009). Even assuming error, appellant fails to demonstrate prejudice considering the evidence supporting his conviction for possession of a controlled substance. See Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985).

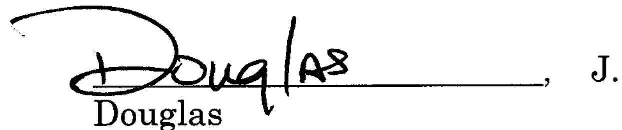
Third, appellant challenges his sentence on the grounds that (1) the district court considered stale and nonviolent prior convictions in adjudicating him a habitual criminal and (2) his punishment is cruel and unusual because he was adjudicated a habitual criminal for both offenses. Appellant enjoyed a lengthy criminal history, sustaining eight felony

convictions in 16 years, with all but one conviction appearing to be nonviolent. See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (providing that habitual criminal adjudication "makes no special allowance for non-violent crimes or for the remoteness of convictions"). Nothing in the record suggests that the district court abused its discretion in sentencing appellant.[1] See Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). And although appellant's sentence is substantial, it falls within statutory limits, see NRS 207.010, and is not cruel and unusual. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

Having considered appellant's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


______________________, J.
Hardesty


______________________, J.
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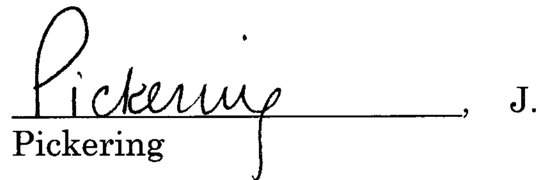
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Pickering

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[1]Appellant failed to provide this court with the sentencing transcript; therefore our review of the district court's sentencing decision is limited. See NRAP 30(b)(3); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant.").

cc: Hon. Steven P. Elliott, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk