IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ALLEN KEVARI A/K/A MAC MCCLAIN MCDUGALD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54402

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. Appellant Scott Allen Kevari raises two issues.

First, Kevari argues that the guilty plea is invalid because he was not sufficiently canvassed regarding the possible maximum sentence under the habitual criminal statute. This argument is raised for the first time on appeal. As a general rule, a challenge to the validity of a guilty plea must be raised in the district court in the first instance in a motion to withdraw the guilty plea or a post-conviction petition for a writ of habeas corpus. Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986). Because we are not convinced that Kevari's claim fits an exception to this general rule, cf. Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994) (indicating that general rule stated in Bryant would not apply "where the error clearly appears from the record"); Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989) (treating case as "exception to our ruling in Bryant" where issue involved question of law as to the constitutionality of the statute under which defendant pleaded guilty), abrogated on other

grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2002), we decline to consider the challenge to the validity of the guilty plea.

Second, Kevari argues that the sentence of life in prison without the possibility of parole under the habitual criminal statute is cruel and unusual punishment in violation of the Eighth Amendment considering his nonviolent history and underlying charge. Kevari does not, however, argue that the sentencing statute is unconstitutional, and we are not convinced that the sentence imposed is so grossly disproportionate to the offense as to shock the conscience. See Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); accord Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); see also Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("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.").

Having determined that Kevari is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Steven R. Kosach, District Judge
Glynn B. Cartledge
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk