IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALLEN MARONEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54943

FILED

SEP 10 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 guilty plea, of 18 counts of sexual assault of a minor under 14 years of age and 20 counts of lewdness with a child under 14 years of age. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court imposed a sentence of life in prison without the possibility of parole for each count, with seven of the sentences to be served consecutively. Appellant Michael Allen Maroney challenges the sentences imposed on three grounds.

First, Maroney argues that the State failed to prove the prior conviction for purposes of the sentence enhancements under NRS 200.366(4) and NRS 201.230(3). Maroney's argument appears to have two components: (1) that the State failed to present sufficient evidence of a constitutionally valid prior conviction and (2) that the State failed to prove that the prior conviction was for an offense that would constitute lewdness with a child under NRS 201.230 or "another sexual offense against a child," NRS 200.366(4); NRS 201.230(3). Both arguments lack merit. The

record indicates that the State presented a certified judgment of conviction from California, which was admitted as an exhibit in the district court.[1] A certified judgment of conviction generally is sufficient to establish the constitutional validity of a prior conviction for enhancement purposes "so long as the record of the conviction does not, on its face, raise a presumption of constitutional infirmity." Dressler v. State, 107 Nev. 686, 697-98, 819 P.2d 1288, 1295-96 (1991). Because Maroney has not provided a copy of the exhibit or requested that this court direct the district court clerk to transmit the original exhibit, see NRAP 30(d), we must presume that the record supports the district court's determination that the State met its burden of producing a constitutionally valid prior conviction. See Riggins v. State, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) ("It is the responsibility of the objecting party to see that the record on appeal before the reviewing court contains the material to which they take exception. If such material is not contained in the record on appeal, the missing portions of the record are presumed to support the district court's decision, notwithstanding an appellant's bare allegations to the contrary."), rev'd on other grounds, 504 U.S. 127 (1992). The record also indicates that, based on the nature of the prior offenses (lewd and lascivious conduct with a child under 14 years of age), Maroney was convicted in another jurisdiction of an offense that, if committed in this State, would constitute lewdness with a child under NRS 201.230, thus meeting the requirements

[1]The discussion during the plea canvass indicates that the judgment provided to the district court included certifications on the back of pages that did not appear on the photocopies provided to the defense.

of the enhancement provisions.[2] Accordingly, Maroney has not demonstrated that the district court erred in determining that he had the necessary prior conviction for purposes of the sentence enhancements.

Second, Maroney argues that the district court violated the Ex Post Facto Clause by applying the sentence enhancements under NRS 200.366(4) and NRS 201.230(3). This argument lacks merit because the enhancement provisions increase the sentence for the charged offenses, not the prior offenses, and the charged offenses were committed from June 2006 to July 2008, after the enhancement provisions were adopted in 2003. 2003 Nev. Stat., ch. 461, §§ 1-2, at 2826. Accordingly, there is no ex-post-facto violation. See Dixon v. State, 103 Nev. 272, 274, 737 P.2d 1162, 1164 (1987) ("[T]he third-offense felony provision is not an ex post facto law simply because [defendant's] earlier convictions antedated its enactment. On the day [defendant] elected to commit the offense here under consideration, reference to the statute would have indicated precisely the penalty he risked."); see also Stevens v. Warden, 114 Nev. 1217, 1221, 969 P.2d 945, 948 (1998) (explaining that ex-post-facto prohibition precludes legislature from increasing punishment for a crime after it has been committed).

Finally, Maroney argues that the sentences imposed are cruel and unusual in violation of the Eighth Amendment. Maroney has not, however, argued that the sentencing statutes are unconstitutional, and we are not convinced that the sentences imposed are so grossly

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[2]The record on appeal does not show that the defense challenged the prior conviction at sentencing on the ground that it was not for an offense that would meet the enhancement requirements.

disproportionate to the offenses so 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).

Having concluded that Maroney's claims are without merit, we ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk