IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL HENRY MELTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55709

FILED

NOV 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of grand larceny. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge. Appellant Henry Melton raises three contentions on appeal.

First, Melton argues that his sentence violates the prohibition against cruel and unusual punishment as well as the legislative intent, as contained in the 2009 amendments to NRS 207.010, behind habitual criminal adjudication. We disagree. Having found at least three prior felony convictions, the district court adjudicated Melton a habitual criminal. The sentence imposed is within the statutory limits, see NRS 207.010(1)(b), and Melton has not alleged that the sentencing statutes are unconstitutional. We conclude that the sentence imposed is not grossly disproportionate to the offense for purposes of the constitutional prohibitions against cruel and unusual punishment. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). While the amendments to NRS 207.010 removed minor crimes from consideration for the penalty,

grand larceny remains within the scope of the statute, see 2009 Nev. Stat. ch. 156, § 1, at 567, and the district court did not abuse its discretion in declining to dismiss the count in the instant case, see O'Neill v. State, 123 Nev. 9, 15 n.21, 153 P.3d 38, 42 n.21 (2007).

Second, Melton argues that the district court improperly considered an unproven prior felony conviction, prior misdemeanor convictions, and a case that had not yet gone to trial in adjudicating him a habitual criminal. We disagree. While the State failed to adequately prove one of the alleged prior convictions, it nonetheless proved the remaining eight sufficiently, which were more than enough to sustain the habitual criminal adjudication. See NRS 207.010(1)(b). There is no indication that the district court considered improper evidence such as prior misdemeanor convictions or pending charges in concluding that Melton was eligible for habitual criminal adjudication. Further, the district court did not err in considering Melton's prior misdemeanor convictions and pending charges in determining the appropriate sentence after the habitual criminal adjudication had been made. See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (providing that the district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant"); Sherriff v. Morfin, 107 Nev. 557, 561, 816 P.2d 453, 456 (1991) (holding that "evidence of uncharged offenses" may be introduced at sentencing); see also NRS 176.015(6).

Third, Melton argues that cumulative error warrants relief. Because Melton did not demonstrate error, this claim lacks merit.

Having considered Melton's contentions and concluding that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk