IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP B. HARPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56437

FILED

NOV 18 2011

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; Michelle Leavitt, Judge.

Appellant Phillip Harper contends that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea and that his sentence amounts to cruel and unusual punishment. Harper further argues that an evidentiary hearing should be held to determine whether the value of the stolen property was $2,500 or more.[1] We conclude that Harper's claims lack merit.

"On appeal from the district court's determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear

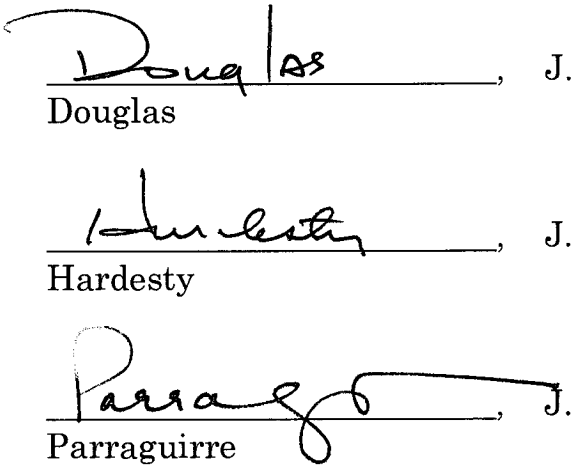
[1]To the extent that Harper makes claims of ineffective assistance of counsel, such claims should be raised in post-conviction proceedings in the district court in the first instance and are generally not appropriate for review on direct appeal. See Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

showing of an abuse of discretion." Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), limited on other grounds by Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Harper's motion is based solely on his unsupported factual allegation that the value of the stolen property was only $420 and therefore his plea to a category B felony was not entered knowingly and intelligently. This claim is belied by the record. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (denying an evidentiary hearing where factual allegations belied by the record). Harper was thoroughly canvassed by the district court and admitted that the value of the stolen property was in excess of $2,500. It was only after Harper read his pre-sentence investigation report that he erroneously concluded that the value of the property was $420. However, this amount was the estimated value of the merchandise that was not returned and did not include the value of the jackets and watches that were returned, which the vendor estimated to be worth $2,200. We therefore conclude that the district court did not abuse its discretion in determining that Harper did not provide a substantial reason that is fair and just for withdrawing his guilty plea. See State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969) (explaining the standard for withdrawing plea before sentencing).

Harper also argues that his sentence as a habitual criminal amounts to cruel and unusual punishment. Harper has not challenged the constitutionality of the habitual criminal statute and the sentences are not so grossly disproportionate to the gravity of the offense and Harper's history of recidivism as to shock the conscience. See Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). Therefore, we conclude that the sentence

imposed does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk