

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL WINN A/K/A MANUAL LEE
WINN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57313

FILED

NOV 18 2011

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

ORDER OF AFFIRMANCE

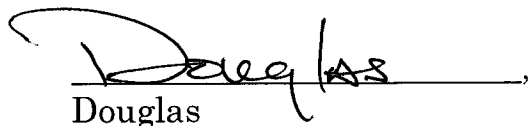
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon and attempted robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Doug Smith, Judge. Appellant Manuel Winn raises two issues on appeal.

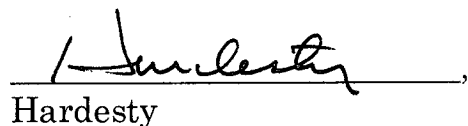
First, Winn argues that there was insufficient evidence to prove his guilt of attempted robbery, see NRS 193.330 (defining attempt); NRS 200.380 (defining robbery), because the State failed to prove that the attempted taking was against the victim's will. We review this claim to determine, after viewing the evidence "in the light most favorable to the prosecution," whether any "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jacks on v. Virginia, 443 U.S. 307, 319 (1979)). Winn asked the victim for money and then stabbed him when he did not immediately produce the money. We conclude that the jury could determine beyond a reasonable doubt that Winn was guilty of attempted robbery.

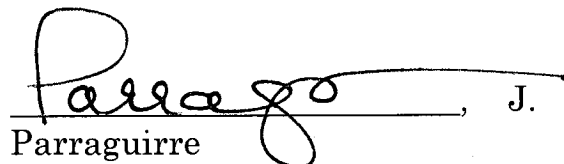
Second, Winn contends that the district court failed to exercise any discretion in adjudicating him a habitual criminal, or, in the alternative, that the district court abused its discretion when it considered remote and nonviolent offenses. Because Winn failed to object below, we review this claim for plain error affecting his substantial rights. See NRS 178.602; Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000). We require “a sentencing court to exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal.” Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000). Here, Winn’s lengthy criminal history reveals, among other criminal activity, two felony convictions within the last ten years. We conclude that the record as a whole demonstrates that the district court was aware of the discretionary nature of habitual adjudication. As to Winn’s alternative claim that the district court considered stale and nonviolent offenses, we disagree. NRS 207.010 makes no special allowance for a prior conviction’s age or seriousness; instead, “these are considerations within the discretion of the district court.” Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Winn has several felony convictions beginning with possession of a controlled substance (1986), sale of a controlled substance (1991), trafficking in a controlled substance (1996), theft (2003), and burglary (2003). We conclude that Winn failed to demonstrate that the district court plainly erred in adjudicating him a habitual criminal.

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

ORDER the judgment of conviction AFFIRMED.

 J.
Douglas

 J.
Hardesty

 J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Mario D. Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk