

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE E. SILVA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57757

**FILED**

SEP 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of burglary, three counts of fraudulent use of a credit or debit card, two counts of theft, and one count each of possession of a credit or debit card without the cardholder's consent, attempted theft, and attempted fraudulent use of a credit or debit card. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Jose Silva argues that the district court conducted an inadequate canvass pursuant to Faretta v. California, 422 U.S. 806 (1975), before allowing him to represent himself. In particular, he contends that the district court neglected to inquire whether he understood any available defenses to his crimes. See SCR 253(3)(h). According to Silva, he clearly did not understand possible defenses because none of his reasons for wanting to represent himself constituted a valid defense and he presented no sensible defense at trial. We disagree.

“[T]o exercise the right to self-representation, a criminal defendant must knowingly, intelligently, and voluntarily waive the right to counsel.” Hooks v. State, 124 Nev. 48, 53-54, 176 P.3d 1081, 1084 (2008). A valid waiver of the right to counsel entails apprising “the defendant fully of the risks of self-representation and of the nature of the


charged crime so that the defendant's decision is made with a clear comprehension of the attendant risks." Id. at 54, 176 P.3d at 1084 (internal quotations omitted). Here, the district court conducted an adequate canvass during which Silva indicated that he understood the nature of the charges and potential penalties, and the district court apprised him of the dangers of self-representation. Although the district court did not specifically inquire whether Silva understood any possible defense to his crimes—an inquiry suggested, not mandated, by SCR 253(3)(h)—the record as a whole shows that his decision to waive his right to counsel was knowing, intelligent, and voluntary. Accordingly, we conclude that the district court did not abuse its discretion in this regard. Id. at 55, 176 P.3d at 1085 (concluding that in reviewing decision to allow self-representation, this court considers district court's canvass and entire record, giving deference to district court's decision).

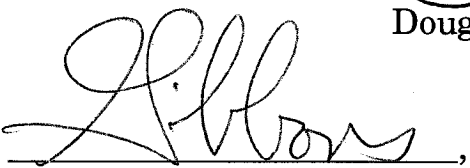
Silva next argues that the district court failed to exercise its discretion in adjudicating him a habitual criminal under NRS 207.010 and that sentencing him under that statute is inappropriate because three of the felonies supporting the enhancement are remote and stale and he poses no serious threat to society. A finding of criminal habituality requires that a sentencing court "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). However, the district court need not "utter specific phrases or make particularized findings" to meet that obligation. Id. (internal quotations omitted). Here, although the district court's comments at sentencing were brief, it was aware of its discretion under the statute, see O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007); Hughes, 116 Nev. at 333, 996 P.3d at 893-94 (concluding that

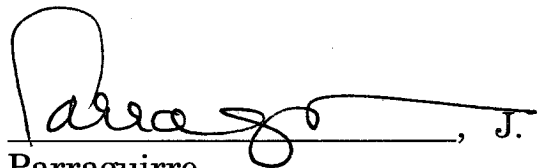
where record as whole shows that sentencing court was not under misconception of law as to discretionary nature of habitual criminal adjudication and it exercised its discretion, sentencing court has met its obligation under law), and imposed criminal habituality after having reviewed the seven felony convictions supporting the enhancement. As to Silva's remaining claim, "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." Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Silva's criminal history shows a spate of criminal convictions from 1987 to 2002 for offenses including two burglaries, burglary and theft, eluding police, possession of stolen property, theft, and grand larceny. Although there is a six-year gap between Silva's last conviction and the current offenses, his record nevertheless shows an enduring penchant for committing felony offenses. The apparent absence of violent convictions is also unpersuasive. We therefore conclude that the district court did not abuse its discretion by adjudicating Silva a habitual criminal.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

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