

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD LEROY HUBBARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58099

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Imeson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of possession of a controlled substance. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Richard Leroy Hubbard contends that the district court erred by adjudicating him a habitual criminal because four of his prior convictions were stale or trivial, the sentences for three of his prior convictions were imposed at the same time, one of his prior convictions punishes a crime that would be a misdemeanor if committed today, and the use of another prior conviction violated the spirit of the plea bargain in that case. We conclude that the district court did not err in relying upon these prior convictions for the following reasons: First, the habitual criminal statute “makes no special allowance for non-violent crimes or for the remoteness of [prior] convictions.” Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). The record shows that the district court carefully considered the staleness of some of the prior convictions giving less weight to those prior convictions and instead focusing on more recent convictions. Second, the record indicates that all of Hubbard’s prior convictions grew out of separate acts, transactions, or occurrences, and were prosecuted under separate charging documents and could properly be treated as separate prosecutions for habitual criminal adjudication

purposes. See Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979). Third, Hubbard has not provided an appellate record that demonstrates his prior felony conviction for marijuana possession would have been a misdemeanor conviction if the crime were committed today, see Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (appellant has the burden to provide this court an adequate record to review assignments of error asserted on appeal), but even if this offense would be treated as a misdemeanor today, it was a felony then and the conviction for that felony can be used for enhancement purposes, cf., State v. Dist. Ct. (Pullin), 124 Nev. 564, 568, 188 P.3d 1079, 1081 (2008) (“[T]he law in effect at the time of the commission of a crime governs the prosecution of criminal offenses.”); State ex rel. Orsborn v. Fogliani, 82 Nev. 300, 301-02, 417 P.2d 148, 148 (1966) (when an offense can be treated as either a misdemeanor or a felony, this court determines how it was treated by looking at the sentence imposed by the trial court). Finally, Hubbard has not demonstrated that the guilty plea he entered in a prior offense was induced in any way by his belief that the conviction would not be used to enhance future convictions. See State v. Smith, 105 Nev. 293, 298, 774 P.2d 1037, 1041 (1989); Greene, 96 Nev. at 558, 612 P.2d at 688.

Having considered Hubbard’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk