

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY WILLIAM MCKENNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58484

FILED

MAR 07 2012

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

ORDER OF AFFIRMANCE

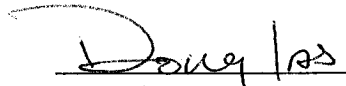
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

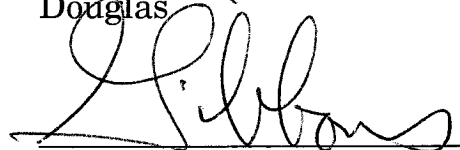
Appellant Jeffrey William McKenna contends that the district court abused its discretion by adjudicating him a habitual criminal because the instant offense was non-violent, some of the prior felony convictions relied upon for habitual criminal treatment were relatively old, and all of the prior convictions were non-violent. The district court has broad discretion to dismiss a count of habitual criminality. See NRS 207.010(2); O'Neill v. State, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). Our review of the record reveals that the district court understood its sentencing authority and exercised its discretion not to dismiss the count. See Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000); see also Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions."). We conclude that the district court did not abuse its discretion by adjudicating McKenna a habitual criminal.

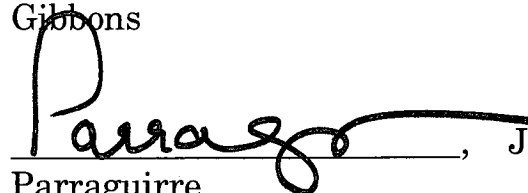
McKenna also contends that his sentence of 8 to 20 years in prison is grossly disproportionate to the offense and his criminal history

and constitutes cruel and unusual punishment. McKenna does not allege that the habitual criminal punishment statute is unconstitutional, his sentence is within the parameters of that statute, and we are not convinced that the sentence imposed is so disproportionate to the gravity of the offense and McKenna's history of recidivism as to shock the conscience. Therefore, we conclude that the sentence does not constitute cruel and unusual punishment, see NRS 207.010(1)(a); Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994), and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

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