

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL CARDENAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58594

**FILED**

**FEB 08 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Indesa*  
DEPUTY CLERK

ORDER VACATING SENTENCE AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of failure to appear after admission to bail. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Joel Cardenas contends that the district court abused its discretion in adjudicating him a habitual criminal pursuant to NRS 207.010(1)(a) because his failure-to-appear conviction was non-violent in nature and his first felony conviction was stale. The district court has broad discretion to dismiss a count of habitual criminality. See NRS 207.010(2); Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000). Because the habitual criminal statute “makes no special allowance for non-violent crimes or for the remoteness of convictions,” Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992), and Cardenas does not argue that the sentencing court was under a misconception as to the discretionary nature of the statute, see O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007), Cardenas’ claim lacks merit.

However, our review of the record reveals that Cardenas committed the instant offense on July 8, 2009, almost two years before a judgment of conviction was entered for his second felony conviction. Therefore, we conclude that the district court erred by enhancing

Cardenas' sentence under NRS 207.010(1)(a), see Brown v. State, 97 Nev. 101, 102, 624 P.2d 1005, 1006 (1981) (explaining that felony conviction entered after commission of third offense cannot be used to adjudicate defendant as a habitual criminal); see also NRS 178.602; Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001), and we<sup>1</sup>

ORDER the sentence of the district court VACATED AND REMAND this matter to the district court for resentencing in conformity with the law.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Robert W. Lane, District Judge  
Paul E. Wommer  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

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<sup>1</sup>To the extent that Cardenas argues that the district court erred by denying his motion for a mistrial, we decline to consider this claim because he failed to provide an adequate record to review this claim. See NRAP 3C(e)(2); NRAP 10(b)(1); Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975) ("It is the appellant's responsibility to provide the materials necessary for this court's review.").