IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY KNIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58959

FILED

MAY 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of uttering a forged instrument. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

First, appellant Michael Ray Knight contends that the habitual criminal statute violates due process because it is unconstitutionally vague. U.S. Const. amends. V, XIV. "The vagueness doctrine holds that '[a] conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" Ford v. State, 127 Nev. ___, ___, 262 P.3d 1123, 1125 (2011) (alteration in original) (quoting United States v. Williams, 553 U.S. 285, 304 (2008)). Knight contends that NRS 207.010 encourages arbitrary and discriminatory enforcement because the statute does not provide the district court with any standard to guide its exercise of discretion in adjudicating him as a habitual criminal.[1] We disagree. Although the district court is afforded

[1]To the extent Knight argues that the NRS 207.010 does not provide fair notice of what is prohibited, he fails to explain how the language "any

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wide discretion at sentencing, it is prohibited from relying on impalpable or highly suspect evidence. See Renard v. State, 94 Nev. 368, 369-70, 580 P.2d 470, 471 (1978). Furthermore, "NRS 207.010 only grants a district court the discretion to dismiss a count of habitual criminality, not the discretion to adjudicate that status based on factors other than prior convictions." O'Neill v. State, 123 Nev. 9, 15, 153 P.3d 38, 42 (2007); see also Blakely v. Washington, 542 U.S. 296, 333 (2004) (Breyer, J., dissenting) (explaining that downward departures from presumptive sentences are constitutional); O'Neill, 123 Nev. at 15 n.21 & 16, 153 P.3d at 42 n.21 & 43 (listing factors district court may consider when exercising its discretion to dismiss). Finally, indeterminate sentencing regimes that allow full judicial discretion within statutory ranges do not violate the United States Constitution. See Williams v. New York, 337 U.S. 241, 251-52 (1949); see also United States v. Booker, 543 U.S. 220, 233 (2005) (explaining that the United States Supreme Court is in unanimous agreement); Blakely, 542 U.S. at 304-05 (citing the holding in Williams with approval); see generally Nev. Const. art. 5, § 14, cl. 3; NRS 176.015(6). Therefore, we conclude that this contention lacks merit.

Second, Knight contends that the district court erred by admitting his prior judgments of conviction because they did not state whether his prior convictions were entered pursuant to a plea, verdict, or

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felony" or "three times convicted of any [felony] crime" is "'so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'" Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939) (quoting Connally v. General Const. Co., 269 U.S. 385, 391 (1926)).

finding as required by NRS 176.105.[2] We disagree. Despite the inadequacy of the judgments' recitals, "'it is the process actually employed which determines the legality of a conviction and not a failure to make written evidence of it in the judgment.'" Revuelta v. State, 86 Nev. 224, 227, 467 P.2d 105, 107 (1970) (quoting Sanders v. Johnston, 165 F.2d 736, 737 (9th Cir. 1948)). The documentation supplementing the judgments of conviction was sufficient to establish that all three of Knight's convictions were entered pursuant to valid guilty pleas. See id. ("'In the event of failure to make such written evidence recourse to all the records of the court may be had . . .'" (quoting Sanders, 165 F.2d at 737)); Dressler v. State, 107 Nev. 686, 698, 819 P.2d 1288, 1296 (1991) (requiring appellant to establish that conviction is constitutionally infirm). Therefore, we conclude that the district court did not err by admitting Knight's prior convictions.

Third, Knight contends that the district court abused its discretion by adjudicating him a habitual criminal pursuant to NRS 207.010(1)(b)(3) because his prior convictions were stale and non-violent in nature. Knight's claim that his prior convictions were stale is belied by the record. Over a twenty-nine year period, the longest period of time Knight was able to refrain from committing a new criminal offense after being released from custody was less than seven months. Cf. Sessions v. State, 106 Nev. 186, 191, 789 P.2d 1242, 1245 (1990) (where most recent prior conviction was twenty-three years old). Furthermore, the habitual criminal statute "makes no special allowance for non-violent crimes or for

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[2]To the extent that Knight contends that the district court lacked jurisdiction to accept his guilty plea for one of the prior convictions, this claim is belied by the record.

the remoteness of convictions," Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992), and Knight does not argue that the sentencing court was under a misconception as to the discretionary nature of the statute, see O'Neill, 123 Nev. at 16, 153 P.3d at 43. We conclude that the district court did not abuse its discretion, see NRS 207.010(2); Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000), and we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Hon. Connie J. Steinheimer, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk