IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE R. ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58969

FILED

FEB 08 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 burglary. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Appellant George R. Adams contends that the district court abused its discretion by (1) adjudicating him as a habitual criminal because his prior convictions were nonviolent and stale, and (2) imposing an excessive and disproportionate sentence amounting to cruel and unusual punishment. We disagree.

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). Initially, we note that Adams did not object at the sentencing hearing to the use of the prior convictions for habitual criminal adjudication purposes. Further, our review of the record reveals that the district court understood its sentencing authority and considered the appropriate factors prior to making its determination not to dismiss the count. See Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000) ("Nevada law requires a sentencing court to exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal."); 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 Adams as a habitual criminal.

Additionally, Adams has not alleged that the district court relied solely on impalpable or highly suspect evidence or demonstrated that the sentencing statutes are unconstitutional. See Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). Adams' prison term of 96-240 months falls within the parameters provided by the relevant statute, see NRS 207.010(1)(a), and the sentence is not so unreasonably disproportionate to the gravity of the offense and Adams' history of recidivism as to shock the conscience, Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); see also Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). We conclude that the district court did not abuse its discretion at sentencing. See Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

Finally, Adams contends that the district court's "failure to conduct a jury trial on the prior convictions" presented by the State for habitual criminal adjudication purposes "amounted to harmful error." Essentially, Adams is asking this court to overrule O'Neill and we decline to do so. See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime . . . must be submitted to a jury, and proved beyond a reasonable doubt."); O'Neill, 123 Nev. at 16, 153 P.3d at 43 (recognizing Apprendi's holding in the context of prior convictions used to support habitual

criminal adjudication). We also note that Adams did not object or raise this issue below. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Doug Smith, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk