

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WINSETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35923

**FILED**

AUG 16 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary and one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to two concurrent terms of 10 to 25 years in prison.

Appellant first contends that he was denied his right to a fair trial because the district court proceeded with the trial despite appellant's objection to wearing jail clothes. This court has previously held: "The presumption of innocence is incompatible with the garb of guilt. When such error has occurred, it is our duty to reverse a conviction unless it is clear that the defendant was not prejudiced thereby." *Grooms v. State*, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980) (citing *Chandler v. State*, 92 Nev. 299, 550 P.2d 159 (1976)).

In this case, we note that appellant's pants, although jail issue, were turned inside out so that the

letters "CCDC" were not visible. Moreover, appellant's attorney stated at the time of the objection, that appellant's "pants and shoes are jail issued although you cannot tell that by just looking at them from plain sight." We conclude that appellant was not prejudiced by having to wear jail issued pants and shoes.

Appellant also contends that the district court abused its discretion at sentencing by adjudicating appellant a habitual criminal. Specifically, appellant argues that the district court failed to weigh the factors for and against the application of the habitual criminal statute and based the decision to adjudicate appellant a habitual criminal solely on the fact that appellant had seven prior felonies. We disagree.

[A]s long as the record as a whole indicates that the sentencing court was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication and that the court exercised its discretion, the sentencing court has met its obligation under Nevada law.

Hughes v. State, 116 Nev. \_\_\_, \_\_\_, 996 P.2d 890, 894 (2000).

In this case, the district court adjudicated appellant a habitual criminal after reviewing the presentence investigation report and listening to arguments from the State and counsel for appellant. We conclude that the district court was not operating under a misconception of the law, and that the district court exercised its discretion. Appellant's contention is therefore without merit.

Having considered both of appellant's contentions  
and concluded that they are without merit, we

ORDER this appeal dismissed.

Maupin J.  
Maupin

Shearing J.  
Shearing

Becker J.  
Becker

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General  
Clark County District Attorney  
Carmine J. Colucci  
Clark County Clerk