

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ALLEN DENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66064

FILED

JUL 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal filed under NRAP 4(c) from a judgment of conviction entered pursuant to a guilty plea. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Richard Denson contends his guilty plea is invalid because his plea was rushed, he did not consult with one of his counsel, he was coerced into pleading guilty, he did not understand what "stipulation" meant, and the plea canvass was not thorough enough. However, challenges to the validity of a guilty plea must be raised in the district court in the first instance, *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), unless the error clearly appears from the record, *Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994). Denson did not file a presentence motion to withdraw his guilty plea nor has he demonstrated the alleged errors clearly appear from the record. Therefore, this claim is improperly raised in his appeal from the judgment of conviction and we decline to review this claim.

Second, Denson claims the district court abused its discretion by adjudicating him a habitual criminal because it failed to consider the

remoteness and nonviolent nature of his prior convictions. Denson also claims the district court failed to explain why habitual criminal adjudication was just and proper.


The habitual criminal statute makes no special allowance for non-violent crimes or for the remoteness of the prior convictions; these are merely considerations within the discretion of the district court. *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Further, while due process requires a sentencing court to exercise its discretion before adjudicating a defendant a habitual criminal, it is not required to make particularized findings that it is "just and proper" to impose a habitual criminal adjudication. *Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000). "[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." *Id.* at 333, 996 P.2d at 893-94.


Here, the district court knew that Denson had stipulated to "large" habitual criminal treatment, listened to argument of counsel, reviewed numerous prior convictions that spanned 24 years and 5 states, and learned Denson had been arrested on new felony charges while on bail in this case. The district court found Denson was eligible for habitual criminal adjudication, his criminal history was extensive and long, and determined he was a continuing threat to the community. Nothing in the record suggests the district court misunderstood the discretionary nature of the habitual criminal adjudication or failed to exercise its discretion.

To the extent Denson claims the district court erred by ordering his sentence to be served consecutive to another case, Denson

fails to demonstrate the district court abused its discretion. See NRS 176.035(1); *Pitmon v. State*, 131 Nev. ___, ___ P.3d ___ (Adv. Op. No. 16, March 26, 2015, at 6); *Warden, Nev. State Prison v. Peters*, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). Further, Denson fails to demonstrate that the record demonstrates “prejudice resulting from consideration of information or accusations found on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Therefore, we conclude that Denson is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David B. Barker, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk