IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY KNIGHT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36112

FILED

MAR 27 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of nine counts of burglary (counts II-IV, VI-VIII, XI, XII and XVI) and one count of uttering a forged instrument (count V). The district court adjudicated appellant as a habitual criminal with respect to count V and sentenced appellant to life in prison with the possibility of parole after 10 years for that count. With respect to the remaining counts, the district court sentenced appellant to nine terms of 12 to 120 months in prison, to be served consecutively to each other and to the life sentence. The district court also ordered appellant to pay restitution totaling $66,603.38. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant raises three challenges to the sentence imposed: (1) the district court failed to exercise its discretion in adjudicating appellant as a habitual criminal; (2) the district court abused its discretion by adjudicating appellant as a habitual criminal; and (3) the district court abused its discretion by imposing consecutive sentences. For the reasons discussed below, we conclude that these contentions lack merit.

Habitual Criminal Adjudication

Appellant first argues that the "quickness" with which the district court adjudicated appellant as a habitual criminal warrants a new sentencing hearing. In particular, appellant argues that the district court failed to expressly weigh the nature and gravity of the prior convictions and adjudicated appellant based solely on the existence of the prior convictions without exercising its discretion. We conclude that this contention lacks merit.

The district court has broad discretion to dismiss a habitual criminal allegation.[1] Accordingly, the decision to adjudicate an individual as a habitual criminal is not an automatic one.[2] The district court "may dismiss a habitual criminal allegation when the prior convictions are stale or trivial or in other circumstances where a habitual criminal adjudication would not serve the purpose of the statute or the interests of justice."[3]

This court recently explained that "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."[4] Although it is easier for this court to determine whether the sentencing court exercised its discretion where the sentencing court makes particularized findings and specifically addresses the nature and gravity of the prior convictions, this court has never required such explicit

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[1]See NRS 207.010(2).

[2]Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

[3]Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000).

[4]Id. at 333, 996 P.2d at 893.

findings.[5] Instead, we will look to the record as a whole to determine whether the district court exercised its discretion or was operating under a misconception that habitual criminal adjudication is automatic upon proof of the prior convictions.[6]

In this case, the district court heard extensive argument on whether to adjudicate appellant as a habitual criminal. During that argument, the State reminded the district court that adjudication as a habitual criminal is not automatic based on the existence of the prior convictions and that the district court had discretion in deciding whether to adjudicate appellant as a habitual criminal. The district court never disputed that information and heard argument regarding the specifics of the prior convictions, appellant's criminal history in general, and the nature of the instant offenses. At the conclusion of the hearing, the district judge stated that she had reviewed the prior convictions and ruled that they supported "a finding" of habitual criminal enhancement on count V. Further, the judge stated:

> Mr. Knight, you have done nothing in your adult life but commit crimes and stay in institutions. I can't imagine what it might feel[] like to be institutionalized the way you are. I don't know if there is any hope for you in the future. I hope there is. And I hope you maintain the hope that there is.

Although the district court did not specifically address the nature and gravity of the prior convictions before adjudicating appellant as a habitual criminal, we conclude that the record as a whole indicates that the district court understood its sentencing authority and exercised its

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[5] Id.

[6] Id., 996 P.2d at 893-94.

discretion in deciding to adjudicate appellant as a habitual criminal.

Appellant next contends that, assuming the district court actually exercised its discretion, the district court abused that discretion by adjudicating appellant as a habitual criminal because the prior convictions are stale and for non-violent offenses. We conclude that this contention also lacks merit.

As previously mentioned, the district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or justice.[7] The habitual criminal statute, however, 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.[8] We conclude that, in light of appellant's prior felony convictions for burglary in 1985 and 1988 and for burglary and uttering a forged instrument in 1992 and his prior gross misdemeanor conviction for conspiracy to commit burglary in 1992, and considering the scope of the criminal conduct leading to the instant conviction, the district court did not abuse its discretion in adjudicating appellant as a habitual criminal.[9]

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[7]Id. at 331, 996 P.2d at 892; Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

[8]Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

[9]See Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996); Arajakis, 108 Nev. at 984, 843 P.2d at 805.

Consecutive Sentences

Next, appellant contends that the district court abused its discretion by ordering that appellant serve each of the sentences consecutively. Again, we disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision.[10] Accordingly, we will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[11]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[12] Moreover, it is within the district court's discretion to impose consecutive sentences.[13] The State originally charged appellant with fifteen counts of burglary, each of which involved a different victim(s), and one count of uttering a forged instrument. Considering appellant's criminal history, the nature and number of the charges dismissed pursuant to the plea agreement, and the nature and number of charges to which appellant pleaded guilty, we conclude that the district court

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[10]See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[11]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

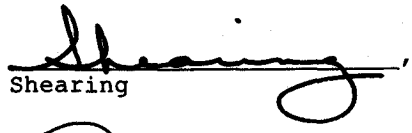
[12]See NRS 205.060(2) (providing for sentence of 1 to 10 years for burglary); NRS 207.010(1)(b) (providing that person convicted of a felony, who has three prior felony convictions, may be sentenced to life in prison without the possibility of parole, life in prison with the possibility of parole after 10 years, or for a definite term of 25 years in prison with parole eligibility after 10 years).

[13]See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

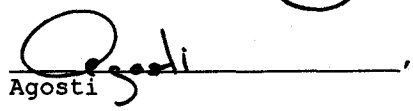
did not abuse its discretion in determining that consecutive sentences were warranted.[14]

Having considered appellant's contentions and concluded that they lack merit, we

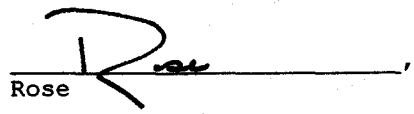
ORDER the judgment of conviction AFFIRMED.[15]



Shearing, J.



Agosti, J.



Rose, J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

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[14]We note that the sentence imposed by the district court with respect to the burglary convictions was less than that recommended by the Division of Parole and Probation (26 to 120 months on each count, all consecutive) and the State (48 to 120 months on each count, all consecutive).

[15]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. In particular, we note that claims of ineffective assistance of counsel must be raised in the district court in the first instance by filing a post-conviction petition for a writ of habeas corpus. See Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).