

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36331

FILED

JUL 10 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of trafficking in a controlled substance and possession of a controlled substance. The district court adjudicated appellant as a habitual criminal, pursuant to NRS 207.010(1)(a), and sentenced appellant to serve two concurrent terms of 60 to 190 months in prison.

Appellant contends that the State presented insufficient evidence to support the habitual criminal adjudication and that the district court abused its discretion by adjudicating appellant as a habitual criminal because his prior felony convictions are stale and for trivial offenses. We conclude that both contentions lack merit.

NRS 207.010(1)(a), the "small" habitual criminal statute, provides for an enhanced sentence for any person convicted of a felony, who also has two prior felony convictions. For purposes of the habitual criminal statutes, the State must prove, beyond a reasonable doubt, the requisite number and type of prior convictions and the defendant's

identity as the person named in the prior judgments.¹ Even where the State has met that burden, 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.² 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.³ A person adjudicated as a habitual criminal pursuant to NRS 207.010(1)(a) may be sentenced to prison for a term of not less than 5 years and not more than 20 years.

Here, the State presented certified judgments of conviction evidencing the following three felony convictions in the State of Nevada: (1) a 1986 conviction for attempted burglary; (2) a 1990 conviction for attempted possession of a controlled substance; and (3) a 1998 conviction for possession of a controlled substance with the intent to sell. Those judgments are consistent in the use of first names and surnames. They also refer to the same Las Vegas Metropolitan Police Department identification number; that identification number is also referenced in the presentence report and the judgment of conviction for the instant offenses. We conclude that the documentation presented by the State was sufficient

¹Howard v. State, 83 Nev. 53, 57, 422 P.2d 548, 550 (1967).

²Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

³Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

to establish appellant's identity as the person named in the prior judgments.⁴

Moreover, we conclude that the district court did not abuse its discretion in adjudicating appellant as a habitual criminal. As noted above, the district court should consider the remoteness of a prior conviction or its staleness in exercising its discretion. Here, the district court considered appellant's argument that the prior felony convictions were non-violent and stale, but nonetheless concluded that the prior felony convictions, coupled with appellant's extensive criminal history, warranted adjudication as a habitual criminal. We cannot conclude that this determination amounted to an abuse of discretion. Contrary to appellant's assertions, this case is not comparable to Sessions v. State,⁵ wherein we concluded that a district court abused its discretion by adjudicating a defendant as a habitual criminal based on prior convictions that were 23 to 30 years old and were for non-violent crimes. In this case, the prior convictions were 2 to 14 years old at the time of sentencing. Moreover, during the 14 years between the 1986 felony conviction and sentencing on the instant offenses, appellant had suffered numerous misdemeanor and gross misdemeanor convictions. Under the circumstances, we conclude

⁴See Hollander v. State, 82 Nev. 345, 348-49, 418 P.2d 802, 804 (1966) (explaining that circumstances such as "identity of first names and surnames" and "any other available identity data" may be relied on to establish an individual's identity as the person named in a prior judgment).

⁵106 Nev. 186, 789 P.2d 1242 (1990).

that the district court did not abuse its discretion in adjudicating appellant as a habitual criminal.⁶

Appellant suggests three additional challenges to the habitual criminal adjudication. First, appellant suggests that the prior convictions are constitutionally invalid because he was not informed that the convictions could be used in the future to obtain a habitual criminal enhancement. Second, appellant suggests that the habitual criminal allegation was invalid because the grand jury did not return the habitual criminal charge. Third, appellant suggests that the 1986 conviction could not be used for enhancement purposes because his civil rights were apparently restored in that case. Appellant, however, has not provided any cogent argument or relevant authority in support of these contentions. Accordingly, we need not consider them.⁷ Nonetheless, we have considered these contentions and conclude that they lack merit.

First, we conclude that the prior convictions are constitutionally valid. Appellant had counsel in each of the prior cases. Accordingly, "it can be safely presumed that the 'spirit of constitutional principles' was honored" in the

⁶We note that the district court did not impose the maximum sentence allowable under NRS 207.010(1)(a) and ordered that the sentences be served concurrently. We further note that appellant could have been adjudicated as a habitual criminal under the "large" habitual statute, which provides for sentences of (1) life in prison without the possibility of parole, (2) life in prison with the possibility of parole after 10 years, or (3) a definite term of 25 years with parole eligibility after 10 years. NRS 207.010(1)(b).

⁷See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

earlier proceedings.⁸ Moreover, a defendant need only be informed of the direct consequences of a guilty plea.⁹ A direct consequence is one that has a definite, immediate, and largely automatic effect on the range of the defendant's punishment.¹⁰ We conclude that the possibility that a conviction will be used to enhance the penalty for a subsequent conviction is not a direct consequence of a guilty plea.¹¹

Second, we conclude that the State properly amended the indictment to include notification of the habitual criminal allegation. Contrary to appellant's assertions, the habitual criminal allegation did not have to be found by the grand jury because it did not charge a separate substantive crime.¹²

Finally, we conclude that the restoration of appellant's civil rights in connection with the 1986 conviction does not invalidate the habitual criminal

⁸Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996).

⁹Stocks v. Warden, 86 Nev. 758, 762-63, 476 P.2d 469, 471-72 (1970).

¹⁰See, e.g., United States v. Kikuyama, 109 F.3d 536, 537 (9th Cir. 1997).

¹¹Accord United States v. Salerno, 66 F.3d 544, 550-51 (2d Cir. 1995); United States v. Nururdin, 8 F.3d 1187, 1195 (7th Cir. 1993); United States v. Salmon, 944 F.2d 1106, 1130 (3rd Cir. 1991); United States v. Brownlie, 915 F.2d 527, 528 (9th Cir. 1990).

¹²See White v. State, 83 Nev. 292, 429 P.2d 55 (1967) (explaining that habitual criminal proceeding is procedural and does not charge a separate offense); see also NRS 207.016(2) (providing that allegations regarding prior convictions may not be "read in the presence of . . . a grand jury considering an indictment for the [primary] offense").

adjudication. Because the district court adjudicated appellant as a habitual criminal pursuant to NRS 207.010(1)(a), only two prior felony convictions were necessary. Accordingly, the district court did not have to rely on the 1986 felony conviction. Additionally, even if appellant's civil rights were restored after he completed parole¹³ or served his sentence¹⁴ for the 1986 felony conviction, that conviction could still be used for enhancement purposes.¹⁵

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

ORDER the judgment of conviction AFFIRMED.¹⁶

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
David Lee Phillips
Clark County Clerk

¹³See NRS 213.155.

¹⁴See NRS 213.157.

¹⁵See 83-13 Op. Att'y Gen. 46, 52-53 (1983).

¹⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.