IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON LEMARS LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68111

ORDER OF AFFIRMANCE

This is an appeal under NRAP 4(c) from a judgment of conviction, pursuant to a jury verdict, of burglary, possession of a stolen vehicle, and possession of burglary tools. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Jason Lemars Lee first argues the district court erred by failing to sua sponte dismiss two biased jurors. Lee asserts the two jurors had an implied bias against him because they had been victims of crimes similar to the crimes at issue in this matter. Lee did not challenge the seating of these jurors during jury selection and thus, no relief would be warranted absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under the plain error standard, we determine "whether there was error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

We conclude there was no error in this regard. Both of the jurors acknowledged they had been the victims of crimes in the past. However, both jurors stated those prior incidents would have no bearing

upon their ability to be fair in this matter. Given the jurors' statements, Lee fails to demonstrate the jurors possessed an implied bias due to their status as crime victims. *See Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) ("The test for evaluating whether a juror should have been removed for cause is whether a prospective juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." (internal quotation marks omitted)). Because Lee has not demonstrated any error, plain or otherwise, he is not entitled to relief for this claim.

Second, Lee argues the district court abused its discretion in adjudicating him as a habitual criminal and sentencing him according to the small habitual criminal statute. Lee argues that three of his prior felony convictions were stale and all of his prior convictions were for nonviolent offenses.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). The district court has 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).

The record reveals the district court understood its sentencing authority and properly exercised its discretion to adjudicate Lee as a habitual criminal. *See Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000); *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 the district court did not abuse its discretion and Lee's argument lacks merit.

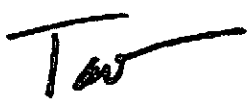
Third, Lee argues his sentence is cruel and unusual because his sentence is disproportionate to his crimes. "A sentence within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (internal quotation marks omitted). Lee's concurrent prison terms of 8 to 20 years fall within the parameters of the relevant statute, *see* NRS 207.010(1)(a), and Lee makes no argument that the statute is unconstitutional. In addition, Lee's lengthy history of recidivism was properly considered when imposing sentence and, under these circumstances, his sentence is not so unreasonably disproportionate to his crimes so as to shock the conscience. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion); *Harmelin v. Michigan*, 501 U.S. 957, 1000–01 (1991) (plurality opinion). Therefore, Lee is not entitled to relief for this claim.

Fourth, Lee argues cumulative error entitles him to relief. However, because Lee fails to demonstrate any error, we conclude he was not entitled to relief due to cumulative error.

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

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk