IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD CHARLES BEERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69727

FILED

JUL 27 2016

TRACIE K. LINDEMAN
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 possession or sale of document or personal identifying information. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Richard Charles Beers first argues the district court abused its discretion in adjudicating him as a habitual criminal and sentencing him according to the small habitual criminal statute. Beers argues that three of his prior felony convictions were stale and trivial.

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 Beers as a habitual criminal due to his lengthy criminal history. *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

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special allowance for non-violent crimes or for the remoteness of convictions."). We conclude the district court did not abuse its discretion and Beers' argument lacks merit.

Second, Beers argues his sentence is cruel and unusual because his sentence is disproportionate to his crime. "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). Beers' sentence of 5 to 13 years falls within the parameters of the relevant statute, *see* NRS 207.010(1)(a), and Beers makes no argument that the statute is unconstitutional. In addition, Beers' 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, this claim lacks merit and we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk