IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN W. LABRUM,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36894

FILED

NOV 16 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 nolo contendere plea,[1] of one count of attempted sexual assault. The district court adjudged appellant Warren W. Labrum a habitual criminal, pursuant to NRS 207.010(1)(b), and ordered him to serve a prison term of life with the possibility of parole after 10 years.

Labrum first contends that the judgment declaring him a habitual criminal should be reversed because the State failed to allege that it was seeking habitual criminal status in the information as required by statute. We conclude that this contention lacks merit. Although the State failed to include a habitual criminal count in the information pursuant to NRS 207.012(2),[2] the State filed a notice of intent to seek habitual felon status prior to Labrum's plea canvass and several months before his sentencing hearing. Further, prior to the acceptance of Labrum's plea, the district court advised Labrum that it could adjudge him a habitual criminal and sentence him to life in prison. Because we conclude that Labrum had adequate notice that the State was seeking to

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[1]Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

[2]NRS 207.012(2) provides that a "district attorney shall include a [habitual criminal count] in any information or shall file a notice of habitual felon if an indictment is found" (emphasis added).

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have him adjudged a habitual criminal, we conclude that Labrum was not prejudiced by the fact that the State filed the notice of intent to seek habitual criminal status separately from the information.[3]

Labrum next contends that the district court erred in using his prior 1966 convictions to enhance his sentence because the convictions were constitutionally infirm. We disagree. At sentencing, the State proffered two certified copies of the 1966 judgments of conviction that stated defense counsel was present when Labrum pleaded guilty in the two cases, and that Labrum was informed of his constitutional rights and the nature of the charges prior to entry of his plea. Because defense counsel was present in each of the prior cases, "it can be safely presumed that the 'spirit of constitutional principles' was honored" in the earlier proceedings.[4] Accordingly, we conclude that the district court did not err in considering the two 1966 convictions because they were not constitutionally infirm.

Labrum next contends that the district court abused its discretion in adjudicating him a habitual criminal because his prior convictions were stale, occurring in 1966 and 1987, and because the district court did not adequately consider the circumstances of Labrum's prior convictions. We conclude that the district court did not abuse its discretion in adjudging Labrum a habitual criminal. The habitual criminal statute makes no special allowance for the remoteness of the prior convictions; these are merely considerations within the discretion of the district court.[5] Here, a review of the sentencing hearing indicates that the district court heard counsels' arguments and Labrum's statement and then exercised its discretion in declaring Labrum a "sexual predator," a "menace to the community and to society," and adjudging him a habitual criminal.

Finally, Labrum contends that that the district court erred by treating appellant's prior 1966 convictions as two separate prior convictions for purposes of applying the habitual criminal statute. Again, we disagree. "[W]here two or more convictions grow out of the same act,

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[3]See Parkerson v. State, 100 Nev. 222, 678 P.2d 1155 (1984).

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

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

transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single 'prior conviction.'"[6] Here, appellant was charged with one count of lewdness with a minor in two different cases for acts committed between December 1965 and August 1966. We conclude that the district court properly considered the 1966 convictions as two convictions because they were not part of the same case, part of a single transaction, or occurrence.

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

ORDER the judgment of conviction AFFIRMED.[7]

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General/Carson City
Carson City District Attorney
Robert B. Walker Jr.
Carson City Clerk

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[6]Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979); see also Halbower v. State, 96 Nev. 210, 211-12, 606 P.2d 536, 537 (1980).

[7]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.