

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WOODROW JUNE MARSHALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81708-COA

**FILED**

**APR 16 2021**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Woodrow June Marshall appeals from a judgment of conviction entered pursuant to a guilty plea of five counts of burglary, four counts of invasion of the home, three counts of grand larceny, two counts of attempted burglary, one count of attempted invasion of the home, one count of burglary while in possession of a firearm, one count of invasion of the home while in possession of a firearm, one count of grand larceny of a firearm, and one count of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Marshall first argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Marshall claims he thought he was pleading guilty to only six counts, his plea colloquy was deficient because it lacked any reference to the elements of the offenses, he did not read the plea agreement, he was not provided a copy of the plea agreement, and he only discussed the plea agreement with counsel for approximately five minutes via video conference. However, Marshall did not raise these claims in his motion before the district court and challenges to the validity of a guilty plea must be raised in the district court in the first instance, *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368

(1986), unless the error clearly appears from the record, *Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994). Marshall has not demonstrated that the alleged error clearly appears from the record. We therefore decline to address this claim.

Marshall next argues the district court abused its discretion by adjudicating him a large habitual criminal without first recognizing its discretion and conducting factor-weighting. 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) (2009); *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 Marshall 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). Therefore, we conclude the district court did not abuse its discretion and Marshall's argument lacks merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David M. Jones, District Judge  
Brown Mishler, PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk