

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHASE THOMAS WELLS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75903-COA

**FILED**

APR 22 2021

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

*ORDER OF AFFIRMANCE*

Chase Thomas Wells appeals from a judgment of conviction pursuant to a guilty plea of establishing or possessing a financial forgery laboratory. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Police arrested Wells after lawfully searching his vehicle and finding numerous fraudulent items usually used to establish financial forgery labs or labs to make counterfeit cards.<sup>1</sup> The State charged Wells with establishing or possessing a financial forgery laboratory, and Wells pleaded guilty to the charge. The district court adjudged Wells as a large habitual criminal and sentenced him to life in prison with the possibility of parole after 10 years. The instant appeal followed.

Wells argues this court should vacate his sentence for three reasons. First, the sentence was unreasonable because the district court based its decision to impose the large habitual criminal enhancement on non-certified judgments of conviction. Second, the district court erred when it denied his request for a continuance. Third, newly codified law would have benefited him had it been the prevailing law when the district court sentenced him.

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

Wells first argues the district court abused its discretion and violated his due process rights by considering non-certified convictions because the State did not prove the non-certified convictions beyond a reasonable doubt. Wells also argues that pursuant to NRS 207.016(3), the district court erred because the statute required the court to hold a hearing on the non-certified convictions in order for the court to consider them.

However, Wells did not contemporaneously object to the use of non-certified copies of convictions during the sentencing hearing, and therefore our analysis is limited to reviewing for plain error. See NRS 178.602; *LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014). To constitute plain error, the appellant must show: (1) there was an error; (2) the error was plain, meaning that a casual inspection of the record clearly shows an error exists; and (3) “the error affected the defendant’s substantial rights.” *LaChance*, 130 Nev. at 276, 321 P.3d at 928 (quoting *Saletta v. State*, 127 Nev. 416, 421, 254 P.3d 111, 114 (2011)). “[A] plain error affects a defendant’s substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a ‘grossly unfair’ outcome).” *Jeremias v. State*, 134 Nev. 46, 51, 412 P.3d 43, 49 (2018) (citing *Miscarriage of justice*, *Black’s Law Dictionary* (10th ed. 2014)).

The district court has discretion to adjudge a criminal defendant as a habitual criminal if the defendant has had three previous felony convictions. NRS 207.010(1)(b) (2009).<sup>2</sup> After adjudging a defendant as a habitual criminal, the district court may sentence the defendant to life in prison with the possibility of parole after 10 years. See NRS 207.010(1)(b)

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<sup>2</sup>The Legislature amended NRS 207.010 in 2019; however, the amendments went into effect after Wells committed his crime. We cite to both versions of the statute to illustrate the differences between them.

(2009). However, “the State must prove the defendant’s prior convictions beyond a reasonable doubt” for the district court to use them to qualify a defendant for a habitual criminal sentence. *Hymon v. State*, 121 Nev. 200, 215, 111 P.3d 1092, 1103 (2005). “[A] certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.” NRS 207.016(5). This court will not disturb the district court’s determination of a habitual criminal adjudication unless the district court abuses its discretion. *Clark v. State*, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993). The district court potentially abuses its discretion if it bases its adjudication on nonviolent convictions that are stale and remote in time. *Sessions v. State*, 106 Nev. 186, 191, 789 P.2d 1242, 1245 (1990) (reversing a district court’s habitual criminal adjudication based on convictions for nonviolent crimes ranging between 23 and 30 years old).

Here, the district court stated that Wells had eight felony convictions when discussing his criminal record in general terms. Nevertheless, the district court properly relied upon six convictions that the State proved beyond a reasonable doubt with certified copies of judgments of conviction, which was more than enough to allow the district court to adjudicate Wells as a habitual criminal pursuant to NRS 207.010 (2009) (under which only three prior convictions are required). Therefore, the district court did not deny Wells due process.

Moreover, Wells’ prior convictions were not stale or remote in time. His four most recent prior convictions all occurred within the 11 years preceding the instant case, and the oldest of the six convictions occurred only six years before that. Wells’ convictions demonstrate a continuous and recent pattern of criminality, not one in which the State relied exclusively upon old convictions to prove that pattern. *See Odoms v. State*, 102 Nev. 27, 32, 714

P.2d 568, 571 (1986) (holding that habitual criminal statutes function to “increase sanctions for the recidivist” and deter repeat offenders). Thus, the district court did not abuse its discretion in enhancing Wells’ sentence under the habitual criminal statute.

Further, Wells inaccurately interprets NRS 207.016(3) in arguing that the district court should have conducted a more detailed hearing. The statute requires Wells to *deny* having a previous conviction he was charged with to trigger a hearing. *See* NRS 207.016(3). Here, Wells objected to one of the certified convictions because the minutes attached to it were from a different case, but never argued to the district court that the conviction was not his. In fact, Wells conceded that “all those charge in California that was me.” As a result, there was no error, plain or otherwise, because Wells was not entitled to a hearing under NRS 207.016(3).

Second, Wells contends the district court abused its discretion by denying his request for a continuance because it failed to consider five circumstances surrounding his request to continue the sentencing hearing.<sup>3</sup> Wells also maintains he would have appeared on time and the district court would not have issued the bench warrant had it trailed or continued his sentencing hearing. Additionally, he avers the denial prejudiced him because had the district court sentenced him under the 2019 amendments to NRS 207.010, his sentence would have been lower.

This court reviews the district court’s decision to grant or deny a motion to continue for an abuse of discretion. *Rose v. State*, 123 Nev. 194,

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<sup>3</sup>The circumstances Wells described are that the district court knew: (1) Wells was subject to the habitual sentence if he failed to appear; (2) Wells was on his way to the hearing; (3) Wells had extenuating circumstances for his tardiness; (4) Wells’ attorney had other court appearances; and (5) as a result, trailing the matter was unviable.

206, 163 P.3d 408, 416 (2007). “Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made.” *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). The district court does not abuse its discretion when the defendant fails to show the denial of the continuance prejudiced them. *Id.*

Here, Wells advances a number of reasons for his failure to attend two different sentencing hearings but unpersuasively explains why those reasons required the district court to continue his sentencing hearing. For example, he admits that he expressly informed his attorney that he would attend the first hearing but then failed to do so despite having a window of two hours to appear. He then failed to appear at his rescheduled hearing because he admitted that he slept in. After waking up, he informed his attorney that he was on his way but then still failed to attend. He argues that the district court should have considered certain extenuating circumstances, such as his having traveled to visit his ailing grandmother, but this visit occurred two days prior to the hearing and does not explain why he told his attorney the morning of the hearing that he was on his way to the courthouse and then failed to appear. Ultimately, the district court provided Wells multiple opportunities to appear, yet Wells without justification failed to appear, and thus the district court did not abuse its discretion in denying his request for a continuance.

Third, Wells avers that the district court should have sentenced him under a new law that only became effective after his sentencing hearing, rather than the law that actually existed at the time he committed his crime. He contends that Assembly Bill (AB) 236, 80th Leg. (Nev. 2019), would have benefited him had the Legislature enacted it before his appeal, because section 55 of the bill modified the definition of burglary, and section 86 of the

bill changed the habitual criminal statute. He contends that these changes demonstrate that the Legislature no longer wishes to impose long habitual criminal sentences for non-violent property crimes, and that intention should have reduced the sentence the district court imposed.

“Whether applying a statute in a particular instance constitutes retroactive operation is a question of law that we review de novo.” *Sandpointe Apts. v. Eighth Judicial Dist. Court*, 129 Nev. 813, 820, 313 P.3d 849, 853 (2013). Courts must apply the law in effect at the time a defendant commits a crime “unless the Legislature clearly expresses its intent to apply a law retroactively.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

We will not apply NRS 207.010 (2019) retroactively because the Legislature did not intend for us to apply it so. The punishment set forth in NRS 207.010 (2009) is the appropriate one because it was in effect at the time Wells committed the crime of establishing or possessing a financial forgery laboratory. Further, there is no language in the statute applying the amendments in NRS 207.010 (2019) retroactively, as well as no indication that the Legislature intended to apply the amendments retroactively. Therefore, we will not apply NRS 207.010 (2019) retroactively.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Susan Johnson, District Judge  
AMD Law, PLLC  
Clark County District Attorney  
Eighth District Court Clerk