

IN THE SUPREME COURT OF THE STATE OF NEVADA

FORREST SCOTT HARMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38182

FILED

MAR 07 2002

JANET E. BLOOM
CLERK OF SUPREME COURT
J. B. Smith
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance. The district court adjudicated appellant Forrest Scott Harman as a habitual criminal and sentenced him to serve a term of life in prison with the possibility of parole after a minimum of ten years. Harman was given credit for 41 days time served.

First, Harman contends that the district court failed to exercise discretion in adjudicating him as a habitual criminal at sentencing. Harman argues that the district court failed to expressly weigh the nature and gravity of the prior convictions and adjudicated him based solely on the existence of the prior convictions without exercising its discretion. Harman contends that the quickness with which the district court adjudicated him as a habitual criminal warrants a new sentencing hearing. We disagree.

The district court has broad discretion to dismiss a habitual criminal allegation.¹ Accordingly, the decision to adjudicate an individual

¹See NRS 207.010(2).

as a habitual criminal is not an automatic one.² The district court "may dismiss a habitual criminal allegation when the prior convictions are stale or trivial or in other circumstances where a habitual criminal adjudication would not serve the purpose of the statute or the interests of justice."³

This court recently explained that "Nevada law requires a sentencing court to exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal."⁴ Although it is easier for this court to determine whether the sentencing court exercised its discretion where the sentencing court makes particularized findings and specifically addresses the nature and gravity of the prior convictions, this court has never required such explicit findings.⁵ Instead, we will look to the record as a whole to determine whether the district court exercised its discretion or was operating under a misconception that habitual criminal adjudication is automatic upon proof of the prior convictions.⁶

In this case, the district court heard argument regarding Harman's prior convictions, his criminal history in general, and the nature of the instant offense. After hearing the arguments of counsel, the district court judge stated:

All right. With the evidence presented to the court and the court looking at the prior record of Mr.

²Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

³Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000).

⁴Id. at 333, 996 P.2d at 893.

⁵Id.

⁶Id. at 333, 996 P.2d at 893-94.

Harman, the Court finds that the State has carried its burden of proof in this matter and the court finds good reason to conclude and find that Mr. Harman is to be -- or is found to be a habitual criminal as defined in NRS 207.010.

Although the district court did not specifically address the nature and gravity of the prior convictions before adjudicating Harman as a habitual criminal, we conclude that the record as a whole indicates that the district court understood its sentencing authority and exercised its discretion in deciding to adjudicate Harman as a habitual criminal.

Second, Harman contends that even assuming the district court actually exercised its discretion, that it was an abuse of discretion in adjudicating him as a habitual criminal because the prior convictions are stale and for non-violent crimes. We disagree.

As previously mentioned, the district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or justice.⁷ The habitual criminal statute, however, makes no special allowance for non-violent crimes or for the remoteness of the prior convictions; these are merely considerations within the discretion of the district court.⁸ We conclude that, in light of Harman's prior felony convictions for burglary in 1984, 1987, and 1989, his prior adjudication as a habitual criminal, and considering the criminal

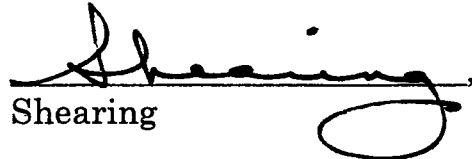
⁷Id. at 331, 996 P.2d at 892; Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

⁸Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

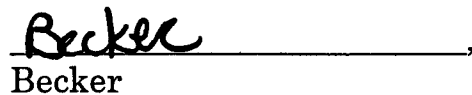
conduct leading to the instant conviction, the district court did not abuse its discretion in adjudicating Harman as a habitual criminal.⁹

Having considered Harman's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁹See Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996); Arajakis, 108 Nev. at 984, 843 P.2d at 805.