

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO MOSQUEDA CARDENAS,  
JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88122-COA

**FILED**

DEC 16 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

FRANCISCO MOSQUEDA CARDENAS,  
JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88123-COA

*ORDER OF AFFIRMANCE*

These are consolidated appeals from a judgment of conviction, entered pursuant to a guilty plea, of grand larceny, value \$1,200 but less than \$5,000 (Docket No. 88122), and a judgment of conviction, entered pursuant to a guilty plea, of exploitation of older or vulnerable person, \$5,000 or greater (Docket No. 88123). Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Cardenas argues the district court erred by adjudicating him a habitual criminal in both of his cases because the court relied upon a prior conviction that was not constitutionally valid: specifically, his conviction in

district court case no. CR07-1268.<sup>1</sup> Cardenas contends there is a presumption his prior conviction is constitutionally infirm because the State failed to demonstrate he was represented by counsel in that matter.

“[I]n order to use a prior felony conviction for enhancement purposes, the state’s initial burden of production shall be satisfied if the state presents *prima facie* evidence of the existence of the prior conviction.” *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). “Such evidence of a prior conviction shall be admitted for enhancement purposes so long as the record of that conviction does not, on its face, raise a presumption of constitutional infirmity.” *Id.* at 697-98, 819 P.2d at 1295-96. “If the state produces valid records of a judgment of conviction which do not, on their face, raise a presumption of constitutional deficiency, then the defendant has the burden of presenting evidence rebutting the presumption of regularity given to a judgment of conviction.” *Id.* at 693, 819 P.2d at 1292-93. “In order to rebut that presumption of regularity, the defendant must make out a *prima facie* case that there is a constitutional deficiency in the judgment of conviction.” *Id.* at 693, 819 P.2d at 1293.

At sentencing, the State presented a certified copy of the judgment of conviction from district court case no. CR07-1268. Thus, the State presented *prima facie* evidence of the prior conviction’s existence. *See* NRS 207.016(5) (stating “a certified copy of a felony conviction is *prima facie* evidence of conviction of a prior felony” for the purposes of habitual criminal adjudication).

Cardenas contends that all the documents presented by the State—certified copies of the information, the guilty plea memorandum,

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<sup>1</sup>In district court case no. CR07-1268, Cardenas was convicted of burglary and sentenced to 16 to 72 months in prison.

and the judgment of conviction—do not indicate the presence of defense counsel and that the guilty plea memorandum was not signed by defense counsel. The lack of any reference to counsel in the judgment of conviction does not give rise to a presumption that the conviction is constitutionally infirm. *See Dressler*, 107 Nev. at 693, 819 P.2d at 1292 (stating “courts should not imply a constitutional deficiency in a judgment of conviction from a silent record”). And although defense counsel did not sign the guilty plea memorandum, Cardenas did, and in that document he affirmed that (1) he had “considered and discussed all possible defenses and defense strategies with [his] counsel”; (2) he had “discussed the charge(s), the facts and the possible defenses with [his] attorney”; and (3) counsel had “carefully explained” the relevant “rights, waiver of rights, elements, possible penalties, and consequences” to him. He further affirmed that he was “satisfied with [his] counsel’s advice and representation leading to this resolution of [his] case” and that he was aware he should advise the court if he was not satisfied with counsel. The State also presented the minutes from Cardenas’ sentencing in district court case no. CR07-1268, which indicated that Cardenas was represented by counsel.<sup>2</sup>

In light of the foregoing, we conclude that the record does not, on its face, raise a presumption of constitutional infirmity with respect to Cardenas’ conviction in district court case no. CR07-1268 and that Cardenas failed to overcome the presumption of regularity afforded criminal

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<sup>2</sup>Although Cardenas contends that the sentencing hearing took place “nearly a year” after he entered his guilty plea, this delay does not indicate Cardenas was not represented by counsel when he entered his plea. Indeed, the State argues, and Cardenas does not dispute, that the delay was due to Cardenas’ failure to complete a Salvation Army Program.

convictions. *See id.* Therefore, the district court properly relied on the record of this conviction in adjudicating Cardenas a habitual criminal.

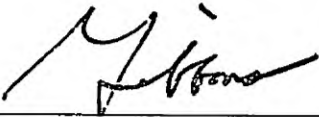
Cardenas also argues that, even if his prior conviction was constitutionally valid, the district court abused its discretion by adjudicating him a habitual criminal. In particular, Cardenas contends the district court “did not appear to recognize” that it had discretion in determining whether to impose the habitual criminal enhancement even if the State produced sufficient qualifying convictions.

“Adjudication of a defendant as a habitual criminal is subject to the broadest kind of judicial discretion.” *LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 929 (2014) (internal quotation marks omitted). “In determining if a finding of habitual criminal is proper, this court looks to the record as a whole to determine whether the sentencing court actually exercised its discretion.” *Id.* at 277, 321 P.3d at 929 (internal quotation marks omitted). “A sentencing court meets its obligations so long as it was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication.” *Id.* (internal quotation marks omitted).

The record does not indicate that the district court erroneously believed habitual criminal adjudication was mandatory if the State presented sufficient qualifying convictions. At the sentencing hearing, the district court stated that it had “reviewed the law with regard to habitual criminal status” and that the court had “broad discretion either to award the request of the deputy district attorney to find Mr. Cardenas a habitual criminal or not.” The court also stated that it was “concerned” one of the convictions was over 20 years old, that two of the convictions were non-violent, and that it was “concerned with [Cardenas’] criminal behavior,” all

of which a court may properly consider in determining whether to adjudicate a defendant a habitual criminal. *See id.* (recognizing a court may consider whether the prior offenses are stale or trivial as well as other factors such as the defendant's criminal history). Therefore, Cardenas fails to demonstrate the district court did not actually exercise its discretion in adjudicating him a habitual criminal.<sup>3</sup> Accordingly, we

ORDER the judgments of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>3</sup>For the foregoing reasons, we reject Cardenas' contention that the district court misunderstood the scope of its discretion.