

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE F. ORMOND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38390

FILED

JUL 22 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of burglary and grand larceny. The district court adjudicated appellant Willie F. Ormond as a habitual criminal pursuant to NRS 207.010(1)(b)(2) and sentenced him to serve two concurrent prison terms of life with the possibility of parole after 10 years.

First, Ormond contends that his guilty plea was invalid because the written plea memorandum failed to indicate the potential maximum sentence. Ormond argues that even though the plea memorandum stated that he may be sentenced as a habitual criminal, it did not explicitly inform him that he could possibly receive a life sentence.¹ As a result, Ormond alleges that he did not understand the consequences of his guilty plea, and also that defense counsel failed to properly advise him.

This court has held that challenges to the validity of a guilty plea must be raised in the district court in the first instance by either

¹Ormond concedes that the plea memorandum accurately stated the potential maximum prison terms for the counts of burglary and grand larceny. Moreover, we note that during the plea canvass, appellant's counsel stated on the record that the "[l]arge habitual criminal [enhancement] carries the potentiality of a life sentence."

filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34.² Because Ormond has not challenged the validity of his guilty plea in the district court, his claim is not appropriate for review on direct appeal from the judgment of conviction.³ Moreover, this court will generally not consider claims of ineffective assistance of counsel on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in an evidentiary hearing.⁴ We conclude that Ormond has failed to demonstrate that we should depart from this policy in his case.⁵

Second, Ormond contends that the district court abused its discretion by adjudicating and sentencing him as a habitual offender. Ormond concedes, based on his criminal history, that he is eligible for habitual criminal adjudication. He argues, however, that his numerous convictions were non-violent in nature and too remote in time – more than twelve years old. We disagree with Ormond’s contention.

The district court has broad discretion to dismiss a habitual criminal allegation.⁶ Accordingly, the decision to adjudicate an individual as a habitual criminal is not an automatic one.⁷ The district court “may

²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

³Id.

⁴See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

⁵See id. at 160-61, 17 P.3d at 1013-14.

⁶See NRS 207.010(2).

⁷Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

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.”⁸

This court 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.”⁹ 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.¹⁰ 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.¹¹

In this case, the district court heard argument regarding Ormond’s numerous prior convictions, his extensive criminal history in general including 82 arrests, and his on-going problem with drug use.¹²

⁸Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (emphasis added).

⁹Id. at 333, 996 P.2d at 893.

¹⁰Id.

¹¹Id. at 333, 996 P.2d at 893-94.

¹²According to the presentence investigation report prepared by the Division of Parole and Probation, Ormond’s criminal history included 5 felony convictions, 23 misdemeanor convictions, 1 probation revocation, and 3 parole revocations.

After hearing the arguments of counsel and a plea from Ormond for help with his drug problem, the district court judge stated:

Mr. Willie Fred Ormond has a history with the Court system and the legal system. And I will grant you, based on looking at what is before me, in terms of danger to the society, he is not a danger from the standpoint I normally look at people to our society in terms of guns and knives and things of that nature. Is he a danger to himself – yes, he is. Is he a nuisance to society – yes, he is. And that's the thrust of what the Court has before it. Do I sentence him on one side and max him out, or do I treat him as an Habitual Criminal? There's a great philosophical argument about what is appropriate under the circumstances.

As to what is before the Court, I am going to adjudicate him an Habitual Criminal and sentence him to life with the possibility of parole eligibility after 10 years in the Nevada Department of Prisons. And likewise--that's as to Count II--and likewise, as to Count V, life with the possibility of parole eligibility after 10 years. Because Mr. Ormond has not been a danger from my standpoint in terms of putting people's life at issue, I'm going to make them concurrent [as] opposed to consecutive.

Based on all of the above and the record as a whole, we conclude that the district court understood its sentencing authority and exercised its discretion in deciding to adjudicate Ormond as a habitual criminal.

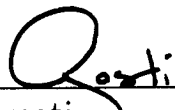
Finally, citing to Lisby v. State¹³ for support, Ormond contends that based on his habitual criminal adjudication, he "should have received a single sentence . . . and not two sentences." Ormond's reliance

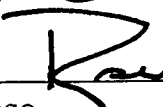
¹³82 Nev. 183, 414 P.2d 592 (1966).

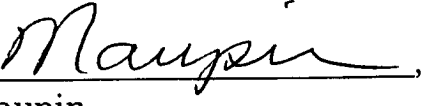
on Lisby for support, however, is mistaken, and his contention is without merit. Ormond pleaded guilty to two separate and distinct felony offenses - burglary and grand larceny. His adjudication as a habitual criminal did not amount to a separate offense, but rather was a "status determination" for purposes of enhancing his punishment as a recidivist.¹⁴ As this court stated in Odoms v. State, "[e]nhancement of the penalty for each primary offense is applicable to each felony conviction."¹⁵ Therefore, we conclude that the district court did not err when it sentenced Ormond to concurrent prison terms of life with the possibility of parole.

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

ORDER the judgment of conviction AFFIRMED.¹⁶


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

¹⁴Schneider v. State, 97 Nev. 573, 575, 635 P.2d 304, 305 (1981); Lisby, 82 Nev. at 189, 414 P.2d at 595.

¹⁵102 Nev. 27, 33, 714 P.2d 568, 572 (1986).

¹⁶We have considered all proper person documents filed or received in this matter and conclude that the relief requested is not warranted.

cc: Hon. Michael L. Douglas, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk