

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID NELSON LEE,

No. 38518

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 22 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF 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 (count I) and two counts of felony issuance of a check without sufficient funds (counts II & III). The district court sentenced appellant David Nelson Lee to serve in prison a term of 12-36 months for count I; a concurrent term of 18-48 months for count II; and a consecutive term of 18-48 months for count III.¹ Lee was also ordered to pay restitution in the amount of \$8,627.37, and given credit for 72 days time served.

Lee contends that the district court erred by sentencing him to consecutive prison terms for counts II and III. Lee argues that pursuant to NRS 205.130, the two counts should have been merged into one because

¹The district court ordered the sentence for count I suspended and granted Lee probation with conditions not to exceed two years.

they were the result of one continuous crime occurring within the 90-day period contemplated in the statute. We disagree.

Initially, we note that Lee did not challenge either the sufficiency of the information filed in the district court, or the written guilty plea agreement; both documents notified Lee of the two separately charged counts of felony issuance of a check without sufficient funds. Further, our review of the transcripts of his arraignment and plea canvass in the district court, where he was informed that the sentences for counts II and III could be ordered to run either concurrently or consecutively, and the sentencing hearing, reveal that Lee never contemporaneously objected at those proceedings. Therefore, we conclude that Lee has not preserved this issue for appeal.² We also conclude that Lee's contention is without merit.

NRS 205.130(1) provides in relevant part:

1. [A] person who willfully, with an intent to defraud, draws or passes a check or draft to obtain:

(a) Money;

. . . or

(e) Credit extended by any licensed gaming establishment, . . .

when the person has insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation, is guilty of a misdemeanor. If that instrument, or a series of instruments passed in the state during a period of

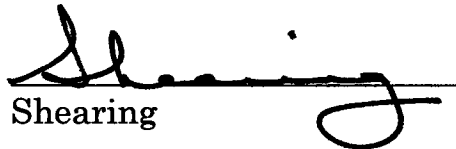
²See NRS 174.105; Sullivan v. State, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260-61 n.3 (1999); Schnepf v. State, 92 Nev. 557, 562, 554 P.2d 1122, 1125 (1976).

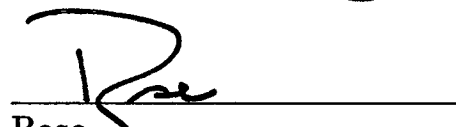
90 days, is in the amount of \$250 or more, the person is guilty of a category D felony.³

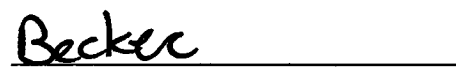
Lee argues that because all of the checks at issue were passed within a 90-day period and exceeded \$250.00, they should have been charged as, and he should have been sentenced on, one count. We conclude, however, that the two counts are not redundant and do not merge. Each count relates to different checks and different incidents on different dates: count II states that nine checks were improperly drawn or passed between December 20, 2000, and December 27, 2000; and count III states that thirty-seven checks were improperly drawn or passed between November 17, 2000, and December 13, 2000. The plain language of NRS 205.130 does not prohibit the State from charging Lee with separate offenses, and therefore, his argument is without merit.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

³Emphasis added.

cc: Hon. David A. Huff, District Judge
Attorney General/Carson City
Lyon County District Attorney
Law Office of Kenneth V. Ward
Lyon County Public Defender
Lyon County Clerk