IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WILLIAM KEEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40061

FILED

NOV 20 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of burglary. The district court adjudicated Keel to be a habitual offender, pursuant to NRS 207.010(1)(a), and sentenced him to serve concurrent terms of 48-120 months and 96-240 months in the Nevada State Prison. This appeal followed.

First, Keel argues that there was insufficient evidence adduced at trial to prove the alleged burglaries. He points out that nothing was actually stolen from the truck and boat he entered, and that police witnesses testified that he seemed intoxicated and very disheveled. This evidence, Keel contends, is equally consistent with him being a homeless person on a drunken binge just looking for a place on a cold February day to "sleep it off."

Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1] It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be

[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

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disturbed on appeal where, as here, substantial evidence supports the verdict.[2]

In particular, we note that undercover police detectives testified at trial that they observed with binoculars as Keel entered the truck and boat. The glove compartment of the truck had been ransacked and papers had been strewn about, possibly in an attempt to find the key to the boat. After Keel left the truck, the officers testified, they saw him kick in the door to the boat's cabin, causing damage to the door, and enter the cabin. We also note that the jury could have concluded that if Keel had been simply looking for a warm place to sleep, he might have slept in the unlocked truck instead of kicking in the door of the boat's cabin. We therefore conclude that the jury could reasonably infer from the evidence presented that Keel intended to commit crimes in the truck and in the boat.

Keel argues next that the district court abused its discretion at sentencing by adjudicating him a habitual offender. Keel argues that this court should review his sentence as suggested in the dissent in Tanksley v. State.[3] Particularly, Keel contends that despite his lengthy criminal record including at least seven prior felonies, his previous crimes were non-violent theft-type crimes resulting in slight monetary losses to the victims. He also argues that habitual offender status is inappropriate because the State only introduced evidence of two prior convictions for embezzlement and grand larceny. We conclude the district court did not abuse its discretion.

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[2]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

[3]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[5] Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional.[6]

In this case, Keel does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[7] We also note that the habitual criminal enhancement is deliberately punitive, intended to discourage criminals who habitually offend society's laws.[8] Moreover, the habitual criminal statute makes no special allowance for nonviolent crimes or for remoteness of convictions; these are considerations properly within the discretion of the district court.[9]

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[4]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987); see also Arajakis v. State, 108 Nev. 976, 983-84, 843 P.2d 800, 805 (1992).

[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[6]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[7]See NRS 205.060(1), NRS 207.010(1)(a).

[8]See Sims v. State, 107 Nev. 438, 440, 814 P.2d 63, 64 (1991).

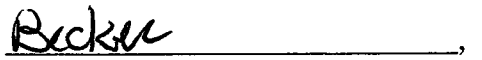
[9]See Arajakis, 108 Nev. at 983, 843 P.2d at 805.

We have considered Keel's arguments and concluded that they lack merit. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

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