

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY KNIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40550

FILED

FEB 10 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of nine counts of burglary, and one count of uttering a forged instrument. The district court adjudicated appellant a habitual criminal as to the count of uttering a forged instrument. The district court sentenced appellant to a prison term of life with parole eligibility after 10 years on the habitual criminal count, and sentenced appellant to nine concurrent terms of 12 to 120 months for the burglary counts. The district court further ordered appellant to pay restitution in the amount of \$66,603.38 to a total of 17 victims.

Appellant was originally convicted of the charges in this matter on April 18, 2000. On direct appeal, appellant argued that the district court abused its discretion at sentencing by adjudicating him a habitual criminal, and by running all the sentences consecutively. This court affirmed the judgment of conviction.¹

¹Knight v. State, Docket No. 36112 (Order of Affirmance, March 27, 2001).

Appellant filed a post-conviction petition for a writ of habeas corpus, and the district court granted the petition. Appellant then entered into negotiations with the State and ultimately pleaded guilty to exactly the same charges of which he was originally convicted. At sentencing, the district court again adjudicated appellant a habitual criminal and imposed a sentence that was identical to the first sentence, except that the counts were ordered to run concurrently rather than consecutively. This appeal followed.

Appellant's sole contention is that the district court abused its discretion at sentencing by adjudicating appellant a habitual criminal. Specifically, appellant argues that the district court's habitual criminal finding may have been "driven" by the previous finding of habitual criminality. We disagree.

At the second sentencing hearing, the district court adjudicated appellant a habitual criminal after carefully evaluating appellant's prior convictions and listening to arguments from the State and counsel for appellant. The district court also made specific findings that adjudication as a habitual criminal was appropriate in this case. We conclude that the district court was not operating under a misconception of the law, and that the district court appropriately exercised its discretion.² There is no evidence that the district court "automatically" adjudicated appellant a habitual criminal because appellant had previously been so adjudicated.

²See Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

Having considered appellant's contention and concluded that
it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk