IN THE SUPREME COURT OF THE STATE OF NEVADA

PABLO GARCIA CEBALLOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40929

FILED

DEC 23 2003

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 one count of burglary and one count of uttering a forged instrument. The district court adjudicated appellant a habitual criminal and sentenced appellant to a prison term of 72 to 180 months for burglary, and to a concurrent term of 12 to 48 months for uttering a forged instrument.

Appellant's sole contention is that the district court abused its discretion at sentencing by adjudicating appellant a habitual criminal. Specifically, appellant argues that he should not have been adjudicated a habitual criminal because all of his prior convictions were for non-violent property crimes.[1]

The district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the

[1]Appellant's prior convictions were for receiving stolen property, second-degree robbery, petty theft with priors, grand larceny, and escape.



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interests of the statute or justice.[2] The habitual criminal statute, however, makes no special allowance for non-violent crimes; this is merely a consideration within the discretion of the district court.[3] We conclude that, in light of appellant's five prior felony convictions, one of which was robbery, the district court did not abuse its discretion in adjudicating appellant as a habitual criminal.[4]

This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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."[6]

In the instant case, appellant 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]

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[2]See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

[3]See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

[4]See Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996); Arajakis, 108 Nev. at 984, 843 P.2d at 805.

[5]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

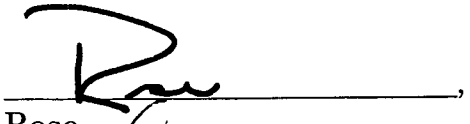
[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[7]See NRS 207.010(1)(a); NRS 205.090; NRS 205.110; NRS 193.130(2)(d).

Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

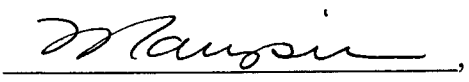
Having considered appellant's contention and concluded it is without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Rose

_____, J.
Leavitt



_____, J.
Maupin

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