

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY SCOTT HERMANSKI A/K/A
ROBERT JAMES DAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41405

FILED

JUL 01 2004

ORDER OF AFFIRMANCE

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

This is a direct appeal from an amended judgment of conviction. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant was prosecuted, sentenced, and convicted under the name Robert James Day. However, appellant's real name is Gregory Scott Hermanski. On March 15, 2001, a jury convicted appellant of robbery with the use of a deadly weapon and burglary while in possession of a deadly weapon. The district court entered a judgment of conviction on May 18, 2001. Based on the prior convictions of the true Robert James Day, the district court adjudicated appellant a habitual offender and sentenced him to a maximum of 300 months and a minimum of 120 months in the Nevada State Prison.

On June 8, 2001, appellant filed a timely notice of appeal, and on November 15, 2001, this court affirmed the judgment of conviction in part and remanded in part. Although we affirmed the conviction, we remanded for corrections to the sentence and judgment of conviction.¹

¹Day v. State, Docket No. 38028 (Order of Affirmance in Part and Remand in Part, November 15, 2001).

Subsequent to our order of remand, it was discovered that appellant was not Robert James Day, but rather Gregory Scott Hermanski. The district court vacated Hermanski's sentence and conducted another sentencing hearing. On December 26, 2002, the State filed a notice of intent to seek punishment of Hermanski as a habitual criminal pursuant to NRS 207.012(2), based on Hermanski's prior convictions. On April 30, 2003, the district court adjudicated Hermanski as a habitual offender and sentenced him to serve two concurrent life sentences in the Nevada Department of Corrections without the possibility of parole. The amended judgment of conviction was entered on May 16, 2003. Hermanski timely appeals from the amended judgment of conviction.

Hermanski raises two issues in his appeal. First, he claims that his due process rights were violated when the State allegedly permitted him to testify under a false name knowingly. However, Hermanski points to nothing in the record indicating that the State was aware at the time of trial or sentencing that Hermanski was not Robert James Day. In fact, Hermanski was responsible for introducing perjured testimony into his trial by testifying under oath that he was Robert James Day. Furthermore, during direct examination Hermanski perpetuated the fraud by admitting to offenses of which Day was convicted. Hermanski also argues that had the jury known his true identity, the jury would have concluded "Hermanski was not the same violent-type person as Day." Hermanski's assertion is ludicrous. Hermanski had more violent felony

convictions on his record than Robert James Day.² Obviously, Hermanski considered it in his best interest to portray himself as Robert James Day, a person whose criminal record was less extensive than his own. We conclude that Hermanski will not now be heard to complain that the jury convicted him under a false identity that he assumed.

Second, Hermanski claims that the State failed to file an information seeking to treat him as a habitual criminal under the name Gregory Scott Hermanski and thus, no notice was provided as required under NRS 207.012(2). Hermanski cites this court's decision in Crutcher v. District Court as support for his assertion.³ Crutcher is inapplicable under the facts of this case. Here, once Hermanski's true identity became known, the district court vacated the sentence and ordered a new sentencing hearing. Prior to his new sentencing hearing, the State filed a notice of intent to seek punishment of Hermanski as a habitual criminal. In that notice, the State specifically stated that it intended to seek an adjudication of appellant Gregory Scott Hermanski as a habitual criminal pursuant to NRS. 207.012. Additionally, the State's notice listed Hermanski's prior 11 felonies in support of its allegation of habitual criminality. Unlike in Crutcher, because the district court vacated Hermanski's sentence after it learned that he had falsely portrayed himself as Robert James Day, Hermanski was not under a sentence of imprisonment at the time the State filed its notice that it would seek a

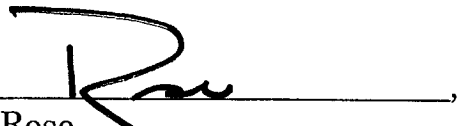
²Robert Day's criminal record reflects five prior felony convictions, one of which was violent in nature. Gregory Scott Hermanski's criminal record reflects 11 prior felony convictions, four of which involved violent offenses.

³111 Nev. 1286, 903 P.2d 823 (1995).

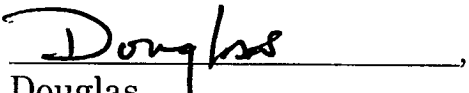
habitual criminal adjudication. Accordingly, we conclude this issue is without merit.

Having considered Hermanski's contentions and concluded they lack merit, we

ORDER the judgment of the district court AFFIRMED.


Rose, J.


Maupin, J.


Douglas, J.

cc: Hon. Kathy A. Hardcastle, District Judge
Paul E. Wommer
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk