

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL CAMERON SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41546

**FILED**

JAN 27 2004

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of resisting and/or obstructing a public officer with a dangerous weapon (count I), eluding a police officer (count II), assault with a deadly weapon (count III), and possession of a short-barreled shotgun (count IV). The district court adjudicated appellant Michael Cameron Smith as a habitual criminal and sentenced him to serve a prison term of 10-25 years and ordered him to pay \$7,7074.27 in restitution, of which \$2,396.00 was ordered to be paid jointly and severally with his codefendant.

Smith contends that the district court abused its discretion by adjudicating him as a habitual criminal and imposing an excessive sentence. Citing to the dissent in Tanksley v. State<sup>1</sup> for support, Smith argues that this court should review the sentence imposed by the district court to determine whether justice was done. Smith points out that he confessed to his crime, and was candid and cooperative with the State; and therefore, his sentence should be reversed. We disagree with Smith's contention.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but

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<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

forbids only an extreme sentence that is grossly disproportionate to the crime.<sup>2</sup> This court has consistently afforded the district court wide discretion in its sentencing decision and 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.”<sup>3</sup> Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.<sup>4</sup>

The district court has broad discretion to dismiss a habitual criminal allegation.<sup>5</sup> Accordingly, the decision to adjudicate an individual as a habitual criminal is not an automatic one.<sup>6</sup> The district court “may dismiss a habitual criminal allegation when . . . a habitual criminal adjudication would not serve the purpose of the statute or the interests of justice.”<sup>7</sup> This court explained that “Nevada law requires a sentencing

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<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>3</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

<sup>5</sup>See NRS 207.010(2).

<sup>6</sup>Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993).

<sup>7</sup>Hughes v. State, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (emphasis added).

court to exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal.”<sup>8</sup> Although it is easier for this court to determine whether the sentencing court exercised its discretion when the sentencing court makes particularized findings and specifically addresses the nature and gravity of the prior convictions, this court has never required such explicit findings.<sup>9</sup> Instead, we will look to the record as a whole to determine whether the district court exercised its discretion or was operating under a misconception that habitual criminal adjudication is automatic upon proof of the prior convictions.<sup>10</sup>

In the instant case, Smith does not allege that the district court relied on impalpable or highly suspect evidence, that the relevant sentencing statute is unconstitutional, or that the sentence was so unreasonably disproportionate to the crime as to shock the conscience. In fact, Smith does not even articulate how the district court may have erred in determining that he is a habitual criminal.<sup>11</sup> First, we note that the sentence imposed was within the parameters provided by the relevant statute.<sup>12</sup> Second, we note that the State presented incontrovertible evidence at the sentencing hearing that Smith had an extensive violent

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<sup>8</sup>Id. at 333, 996 P.2d at 893.

<sup>9</sup>Id.

<sup>10</sup>Id. at 333, 996 P.2d at 893-94.

<sup>11</sup>See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (holding that “[i]t is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court”).


<sup>12</sup>See NRS 207.010(1)(b)(3).


and criminal history, including several felony convictions, despite being incarcerated for much of his adult life. As a result, the State asked the district court to impose a sentence of life without the possibility of parole. The presentence investigation report prepared by the Division of Parole and Probation listed an additional 18 prior arrests, 9 misdemeanor convictions, and several revoked terms of parole and probation. The district court considered the arguments of counsel and a lengthy statement by Smith, and stated that his adjudication and sentence as a habitual criminal was based on his extensive criminal history.


Therefore, based on all of the above and the record as a whole, we conclude that the district court understood its sentencing authority and exercised its discretion in deciding to adjudicate Smith as a habitual criminal. Accordingly, we conclude that the district court did not abuse its discretion at sentencing, and the sentence imposed is not excessive or disproportionate to the crime.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jerome Polaha, District Judge  
M. Jerome Wright  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk