

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH B. WARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41804 **FILED**

SEP 15 2004

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

ORDER AFFIRMING IN PART AND REMANDING IN PART TO
CORRECT JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of attempted robbery with a deadly weapon, three counts of battery with intent to commit a crime, and one count of burglary. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge and Kathy A. Hardcastle, Judge. The district court adjudicated appellant a habitual criminal and sentenced him to seven concurrent terms of life with the possibility of parole after 10 years.

Appellant first contends that he is entitled to a new sentencing hearing. Specifically, he argues that only the judge who presided over the trial may conduct a sentencing proceeding where there is a determination of habitual criminal status. In this case, Judge McGroarty presided over the trial, but Judge Kathy Hardcastle ultimately conducted the sentencing hearing.

In making his argument, appellant relies on this court's decision in Howard v. State.¹ We conclude that Howard does not stand for the proposition that a defendant may only be adjudicated a habitual

¹83 Nev. 53, 422 P.2d 548 (1967).

criminal by the judge who conducted his trial. The issue in Howard was whether a defendant had the right to have evidence of prior convictions presented to a "judge and jury" rather than just the judge at a sentencing proceeding. This court concluded: "We hold that the trial judge alone may receive that proof."² When considered in context, it is clear that this statement should not be read to mean that only the judge who conducted the trial may make the habitual criminal determination.

Appellant has failed to cite to any authority that supports his argument. Various courts have held, however, that a defendant does not have a constitutional right to be sentenced by the same judge who presided over the trial.³ We therefore conclude that appellant's first contention is without merit.

Appellant next contends that his sentence should be reversed because it is not clear from the record whether Judge Hardcastle weighed the appropriate factors and properly exercised her discretion in adjudicating appellant a habitual criminal. Appellant correctly points out that "Nevada law requires a sentencing 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."⁴

The district court adjudicated appellant a habitual criminal after listening to lengthy arguments from the State and counsel for appellant. It is reasonable to assume that the district court considered the

²Id. at 57, 422 P.2d at 550.


³See e.g., United States v. Whitfield, 874 F.2d 591, 592 (8th Cir. 1989); United States v. Fitzpatrick, 548 F.2d 105, 108 (3d Cir. 1977).


⁴Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).


arguments and the presentence investigation report, and concluded that adjudication of appellant as a habitual criminal was just and proper.⁵ We therefore conclude that this contention is also without merit.

This court notes, however, that the judgment of conviction states that appellant was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we affirm the judgment of conviction and remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction.

It is so ORDERED.


_____, J.
Becker


_____, J.
Agosta


_____, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Hon. Kathy A. Hardcastle, District Judge
Marvin L. Longabaugh
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵Cf. Clark v. State, 109 Nev. 426, 851 P.2d 426 (1993) (district court erred by adjudicating defendant a habitual criminal where it appeared that district court thought imposition of enhancement was mandatory, and district court therefore did not exercise any discretion in making the ruling).