

IN THE SUPREME COURT OF THE STATE OF NEVADA

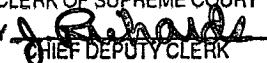
KEVIN TYRONE RUFFIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45598

FILED

APR 06 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On June 13, 2000, the district court convicted appellant Kevin Tyrone Ruffin, pursuant to a jury verdict, of one count of burglary and one count of larceny from the person. The district court adjudicated Ruffin a habitual criminal and sentenced him to serve two consecutive prison terms of life with the possibility of parole. We affirmed the conviction on direct appeal.¹

On March 13, 2002, Ruffin filed a proper person motion in the district court seeking to modify his sentence. He contended that the district court relied upon uncertified and constitutionally infirm copies of the prior judgments of conviction in adjudicating him a habitual criminal. The State opposed the motion, the district court denied the motion, and Ruffin filed a proper person appeal.

¹Ruffin v. State, Docket No. 36330 (Order of Affirmance, November 19, 2001).

On December 15, 2002, with the assistance of counsel, Ruffin filed a post-conviction petition for a writ of habeas corpus in the district court. Ruffin contended, among other things, that his trial counsel was ineffective for not adequately challenging the prior judgments of conviction relied upon by the district court in adjudicating him a habitual criminal, and that his appellate counsel was ineffective for failing to raise any issues on direct appeal concerning his habitual criminal adjudication. The State opposed the petition, the district court denied the petition, and Ruffin filed a proper person appeal.

We addressed Ruffin's proper person appeals from the orders of the district court denying his motion and petition in a consolidated order.² Because the State was unable to provide a complete record containing copies of the prior judgments of conviction that were admitted into evidence and relied upon by the district court in adjudicating Ruffin a habitual criminal, we were unable to conduct a meaningful review of the district court orders resolving Ruffin's habitual criminal adjudication claims. Therefore, we vacated Ruffin's sentence and remanded the case to the district court with instructions to appoint counsel to represent Ruffin, conduct a new sentencing hearing, and ensure that a complete and accurate record was compiled.

On remand, the district court conducted a new sentencing hearing. During the hearing, the State observed that "under the habitual

²Ruffin v. State, Docket Nos. 40055/41162 (Order Dismissing in Part, Affirming in Part, Reversing in Part, and Remanding, June 8, 2004).

[statute] all we need is three prior felony convictions. He has eleven that I have provided and according to the presentence investigation report he had seventeen." The district court found that Ruffin had sufficient prior convictions to invoke the habitual criminal enhancement, adjudicated Ruffin a habitual criminal, and sentenced Ruffin to serve two concurrent prison terms of life with the possibility of parole after serving ten years. Following the entry of the district court's judgment of conviction, Ruffin filed this appeal.

First, Ruffin contends that the district court erred in adjudicating him a habitual criminal pursuant to NRS 207.010 because the district judge rather than a jury found facts in violation of Apprendi v. New Jersey.³ We recently held in O'Neill v. State "that neither NRS 207.010 nor our case law interpreting it violates Apprendi."⁴ Based on our review of the record, we conclude that the district court properly adjudicated Ruffin a habitual criminal.

Second, Ruffin contends that the district court abused its discretion by adjudicating him a habitual criminal. He argues that his prior convictions were nonviolent and remote in time. NRS 207.010(1) "makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of

³530 U.S. 466 (2000).

⁴123 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 2, March 8, 2007).

the district court."⁵ Moreover, a habitual criminal adjudication is "subject to the broadest kind of judicial discretion," and the district court's decision will not be overturned absent an abuse of discretion.⁶ Based on our review of the record, we conclude that the district court did not abuse its discretion in adjudicating Ruffin a habitual criminal.

Third, Ruffin contends that the district court erred by resentencing him in violation of the Double Jeopardy Clause.⁷ Ruffin claims that the Double Jeopardy Clause bars a second sentencing hearing when the evidence presented at the first sentencing hearing was insufficient to support a habitual criminal adjudication.⁸ However, that is not what happened here. The record reveals that sufficient evidence was presented at the first sentencing hearing to support Ruffin's habitual criminal adjudication. Thereafter, the copies of the prior judgments of conviction that the district court relied upon to adjudicate Ruffin a habitual criminal could not be found, and without them we were unable to conduct a meaningful review of Ruffin's habitual criminal adjudication claims of error. Consequently, we ordered a new sentencing hearing so

⁵Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996) (quoting Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992)).

⁶Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993); Sessions v. State, 106 Nev. 186, 191, 789 P.2d 1242, 1245 (1990).


⁷See U.S. Const. amend. V; Nev. Const. art. 1 § 8.

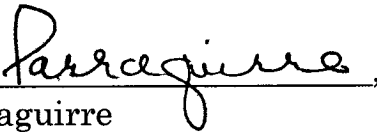
⁸Ruffin cites to Bullard v. State, 665 F.2d 1347 (5th Cir. 1982), vacated, 459 U.S. 1139 (1983).

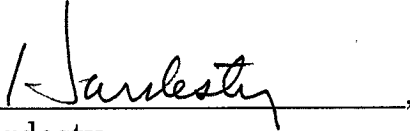
that the district court could compile a complete and accurate record, to include certified copies of all prior criminal convictions admitted into evidence. Under these circumstances, the district court did not err.

Having considered Ruffin's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Maupin


_____, J.
Parraguirre


_____, J.
Hardesty

cc: Eighth Judicial District Court Dept. 16, District Judge
Gregory L. Denué
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk