

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MANUEL HERNANDEZ, JR.,
Appellant,

No. 48752

vs.
THE STATE OF NEVADA,
Respondent.

FRANK MANUEL HERNANDEZ, JR.,
Appellant,

No. 48754✓

vs.
THE STATE OF NEVADA,
Respondent.

FILED

OCT 17 2007

ORDER OF AFFIRMANCE

ANGIE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

These are consolidated appeals from two judgments of conviction, pursuant to guilty pleas, of attempted robbery and battery by a prisoner in lawful custody or confinement. Third Judicial District Court, Churchill County; Wayne A. Pederson, Judge. The district court adjudicated appellant Frank Manuel Hernandez, Jr. a habitual criminal for each offense and sentenced him to serve two consecutive life terms in prison with the possibility of parole after ten years. This appeal followed.

On June 5, 2005, Hernandez entered a Wells Fargo Bank, demanded money from a teller, and threatened to kill her if she did not comply. During his arraignment for this incident, Hernandez hit his counsel in the face and head and was subsequently charged with battery by a prisoner in lawful custody or confinement. Hernandez entered into separate written plea agreements on January 10, 2006, for each of these offenses. The State sought habitual criminal status for each offense and

introduced at the sentencing hearing certified copies of four prior felony convictions. Counsel only objected to the admission of Hernandez's 1994 California felony conviction for burglary, arguing that under California law the age of the conviction required it to be removed from Hernandez's record and sealed. The district court admitted certified copies of all four prior felony convictions and relied on them to sentence Hernandez as a habitual criminal for each offense.

Hernandez raises two issues on appeal. First, he argues that the district court erred in using the same prior felony convictions to adjudicate him a habitual criminal for each offense. Hernandez contends that NRS 207.010 is ambiguous because it lacks clear notice that the same prior felony convictions may be used to support multiple habitual criminal adjudications. We attribute the plain meaning to any unambiguous statute.¹ "An ambiguity arises where the statutory language lends itself to two or more reasonable interpretations."² We discern no ambiguity in the language of NRS 207.010 of the nature Hernandez proposes. Nothing in the plain language of NRS 207.010 precluded the district court from relying on the same convictions to twice adjudicate Hernandez a habitual criminal.

However, even assuming an ambiguity exists, we conclude that the district court did not act improperly. In Carr v. State, we held

¹State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

²Id.


that using the same prior felony convictions to twice adjudicate a defendant as a habitual criminal was proper because doing so did not violate the legislative intent behind NRS 207.010 and an allegation under that statute did not constitute a separate offense.³ Although Carr analyzed this issue under double jeopardy principles, the underlying rationale is appropriate here. Unpersuaded by Hernandez's argument, we conclude that the district court did not err in this regard.

Hernandez next contends that the State breached the plea bargain by arguing for two life sentences instead of one. Although Hernandez pleaded guilty to attempted robbery and battery by a prisoner in lawful custody or confinement in the same hearing, he was charged with these offenses in separate informations and entered into distinct plea agreements for each crime. Each plea agreement provided that the State would recommend a sentence of life in prison with the possibility of parole after ten years. Moreover, during the plea canvass, the district court advised Hernandez of the maximum sentences for attempted robbery and battery by a prisoner in lawful custody or confinement, including a possible life term in prison with or without parole for each offense due to the attendant allegations of habitual criminality. Based on the record before us, we conclude that Hernandez fails to show that the State breached the plea agreements as he suggests.


³96 Nev. 936, 940, 620 P.2d 869, 871 (1980).

Having considered Hernandez's arguments and concluded that they lack merit, we

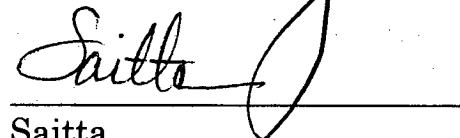
ORDER the judgments of conviction AFFIRMED.⁴



Gibbons J.



Cherry J.



Saitta J.

⁴We note that there appears to be a clerical error in the judgment of conviction. The charging documents in this case indicate that the State sought habitual criminal status pursuant to NRS 207.010 for each offense. However, the judgment of conviction indicates that Hernandez was adjudicated a habitual felon under NRS 207.012 for battery by a prisoner under lawful custody or confinement, an offense which does not qualify for habitual felon treatment under NRS 207.012. Further, there is no indication in the record before us that the State sought or the district court intended to adjudicate Hernandez a habitual felon under NRS 207.012 for either offense. Thus, the reference to NRS 207.012 appears to be a clerical error. Accordingly, following this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until this court issues its remittitur).

cc: Hon. Leon Aberasturi, District Judge
Third Judicial District Court Dept. 2, District Judge
Martin G. Crowley
Attorney General Catherine Cortez Masto/Carson City
Churchill County District Attorney
Churchill County Clerk