

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE LOPEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71665

**FILED**

SEP 13 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

George Lopez appeals from a judgment of conviction, pursuant to a guilty plea, of conspiracy to commit robbery, battery with intent to commit a crime, robbery with the use of a deadly weapon, trafficking in a controlled substance, ownership or possession of a firearm by a prohibited person, burglary while in possession of a firearm, and conspiracy to commit burglary. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Lopez challenges his adjudication and sentence as a habitual criminal, arguing NRS 207.010 is an unconstitutional violation of due process, equal protection and cruel and unusual punishment principles. Lopez also argues his sentence amounts to cruel and unusual punishment and the district court erred in sentencing him under the habitual criminal enhancement. We review his constitutional claims de novo, *Grey v. State*, 124 Nev. 110, 117, 178 P.3d 154, 159 (2008), and his challenges to the district court's sentencing decision for an abuse of discretion, *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

We conclude Lopez' constitutional challenges to NRS 207.010 lack merit. First, Lopez has not demonstrated the State's decision to

include a habitual criminal allegation was based on an impermissible standard such as race, religion or some other arbitrary classification, and therefore, his equal-protection challenge fails. *See Hollander v. Warden*, 86 Nev. 369, 373-74, 468 P.2d 990, 992 (1970). Second, Lopez' double-jeopardy challenge to the statute fails because NRS 207.010 allows for an increased sentence on the charged offense for recidivists, not an additional punishment for the prior offense. *See Carr v. State*, 96 Nev. 936, 940, 620 P.2d 869, 871 (1980) (explaining NRS 207.010 does not charge substantive offense but allows averment of fact that goes to punishment for charged offense); *Hollander*, 86 Nev. at 373, 468 P.2d at 992 (explaining that the defendant was not punished for a prior conviction but for the primary charged offense, with the prior conviction being used under NRS 207.010 to enhance punishment for primary offense). Finally, NRS 207.010 does not violate the Cruel and Unusual Punishment and the Due Process Clauses by subjecting persons to criminal prosecution based upon their "status" because the statute does not charge a substantive offense. *Carr*, 96 Nev. at 940, 620 P.2d at 871.

Next, Lopez argues his sentence under the habitual criminal enhancement amounts to cruel and unusual punishment because his sentence is grossly disproportionate to his crimes as he was not the aggressor in the instant offense.

"A sentence within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (internal quotation marks omitted). Lopez' sentences under the habitual criminal enhancement, consecutive prison terms of life with the possibility

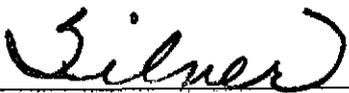
of parole in ten years, fall within the parameters of the relevant statutes, see NRS 176.035(1); NRS 207.010(1)(b)(2), and Lopez fails to meet his burden to demonstrate these statutes are unconstitutional. See *State v. Castaneda*, 126 Nev. 478, 481, 245 P.2d 550, 552 (2010). Lopez' lengthy history of recidivism was properly considered when imposing sentence and, under the circumstances in this case, his sentence is not disproportionate to his crimes and does not constitute cruel and unusual punishment. See *Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion); *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion). Therefore, Lopez is not entitled to relief for this claim.

Third, Lopez argues the district court abused its discretion in adjudicating him a habitual criminal and sentencing him according to the large habitual criminal enhancement. Lopez argues his prior convictions merely involved drug or theft offenses and he took steps toward rehabilitation. Lopez also argues a codefendant had greater culpability in the underlying crimes, yet received a lighter sentence than he did.

We recognize the district court has broad discretion concerning adjudication of a defendant as a habitual criminal. See NRS 207.010(2); *O'Neill v. State*, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). The record reveals the district court understood its sentencing authority and properly exercised its discretion to adjudicate Lopez a habitual criminal due to his lengthy criminal history. See *Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000); see also *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions."). Moreover and as stated previously, Lopez' sentence under the large habitual criminal enhancement falls within the parameters of the relevant statute, see NRS

207.010(1)(b)(2), and he makes no argument his sentence was based upon impalpable and highly suspect evidence. Further, the Nevada Supreme Court has stated "sentencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms," see *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 391, 390 (1990), and therefore, Lopez does not demonstrate he is entitled to relief due to a lighter sentence given to his codefendant. Accordingly, we conclude Lopez fails to demonstrate the district court abused its discretion when imposing his sentence.

Having concluded Lopez is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Elissa F. Cadish, District Judge  
Law Offices of Martin Hart, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk