

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMIEN NICHOLAS PATTILLO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73311

FILED

JUL 27 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Damien Nicholas Pattillo appeals from a judgment of conviction entered pursuant to a guilty plea of attempted violation of an extended protective order. Eighth Judicial District Court, Clark County; Valorie J. Vega, Senior Judge.

First, Pattillo argues his sentence is cruel and unusual because his sentence is disproportionate to his crime. "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). Pattillo's sentence as a habitual criminal of life in prison with the possibility of parole in ten years falls within the parameters of the relevant statute, see NRS 207.010(1)(b)(2), and Pattillo makes no argument the statute is unconstitutional. In addition, Pattillo's lengthy history of recidivism was properly considered when imposing sentence and, under these circumstances, his sentence is not so unreasonably disproportionate to his crime so as to shock the conscience. 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, we conclude this claim lacks merit.

To the extent Pattillo also argues the district court abused its discretion when imposing sentence, we conclude that claim lacks merit. We review a district court's sentencing decision for an abuse of discretion, *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009), and the district court has broad discretion concerning adjudication of a defendant as a habitual criminal, *O'Neill v. State*, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). We will not interfere with the sentence imposed by the district court "[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." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). As stated previously, Pattillo's sentence fell within the parameters of the relevant statutes, *see* NRS 207.010(1)(b)(2), and Pattillo has not alleged the district court relied on impalpable or highly suspect evidence. Therefore, we conclude Pattillo is not entitled to relief.

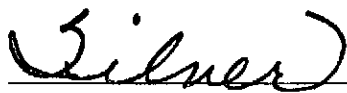
Second, Pattillo argues the district court erred by adjudicating him a habitual criminal without conducting an evidentiary hearing concerning the new charge. Pattillo asserts he should have been given the opportunity to challenge the evidence regarding the new charge prior to the district court's decision to permit the State to seek adjudication as a habitual criminal.


Pattillo did not argue at the sentencing hearing there should have been an evidentiary hearing concerning the new charge or otherwise object to the State's ability to pursue the habitual criminal enhancement. Thus, Pattillo is not entitled to relief absent a demonstration of plain error. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009)


(reviewing unpreserved allegations the district court erred at sentencing for plain error). “In conducting plain error review, we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant’s substantial rights.” *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

The record reveals the parties’ written plea agreement contained a clause which would allow the State to argue for habitual criminal adjudication under certain circumstances, including if an independent magistrate, by affidavit review, confirmed probable cause against him for new criminal charges. Such clauses in a guilty plea agreement are enforceable. *See Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005). At the sentencing hearing, the district court stated Pattillo breached the express condition of that clause because he had received a new charge with a probable cause finding. Given Pattillo’s written plea agreement and the probable-cause finding for his new charge, we conclude Pattillo has not shown the district court erred in adjudicating him a habitual criminal without conducting an evidentiary hearing concerning the new charge. Therefore, we conclude Pattillo fails to demonstrate plain error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Valorie J. Vega, Senior Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk