

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERNANDO JAMES VALLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75083-COA

FILED

APR 05 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Fernando James Valle appeals from a judgment of conviction entered pursuant to a guilty plea of felon in possession of a firearm. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

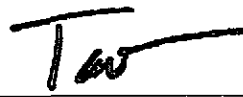
Valle argues the district court abused its discretion at sentencing. Valle asserts the district court should have imposed a more lenient sentence because he only possessed the firearm for 26 seconds and he did not commit a violent crime. We review a district court's sentencing decision for an abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). The district court has broad discretion to dismiss a count of habitual criminality. *See* NRS 207.010(2); *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).


At the sentencing hearing, the district court heard the arguments of the parties and noted Valle only possessed the firearm for a short period of time. However, the district court found Valle had committed

multiple offenses over a lengthy period of time and had performed poorly on both probation and parole. The district court took into consideration “the body of [Valle’s] work, the body of [Valle’s] criminal activity” and concluded a sentence of 60 to 160 months under the small habitual criminal enhancement was appropriate. This sentence was within the parameters of the relevant statute. *See* NRS 207.010(1)(a). In addition, the district court properly considered Valle’s lengthy history of recidivism when imposing sentence, *see Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion), and “NRS 207.010 makes no special allowance for non-violent crimes,” *see Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Moreover, the district court’s decision to decline Valle’s request for probation was within its discretion. *See* NRS 176A.100(1)(c). The record reveals the district court understood its sentencing authority and properly exercised its discretion to adjudicate Valle as a habitual criminal. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk