IN THE SUPREME COURT OF THE STATE OF NEVADA

COURTNEY MADISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85752

FILED

MAR 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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*ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of conspiracy to commit robbery, four counts of burglary while in possession of a firearm, six counts of robbery with the use of a deadly weapon, attempted robbery with the use of a deadly weapon, and murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Appellant Courtney Madison was convicted by a jury of 16 felonies. Counts 1-10 stem from Madison's commission of a burglary, robbery, and/or attempted robbery at three different commercial establishments. Counts 11-16 stem from a single robbery at a residential apartment during which one victim was shot and killed. Madison made multiple motions to sever the counts and hold separate trials. One motion was granted as to a single count, but the remainder of the motions were denied, and the remaining charges were tried together. At sentencing, the district court added 2-5 or 4-10 consecutive years to the sentence for each of Madison's four burglary convictions as deadly weapon enhancements pursuant to NRS 193.165.

First, Madison argues that the district court should have granted his motions to sever the counts, and that trying all counts together was error. Decisions to join or sever are reviewed for an abuse of discretion. *Tabish v. State*, 119 Nev. 293, 302, 72 P.3d 584, 589-90 (2003). Two or more indictments may be tried together if the offenses "could have been joined in a single indictment." NRS 174.155. "Two or more offenses may be charged in the same indictment" if they are "[b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." NRS 173.115(1)(b). "[W]hen determining whether a common scheme exists, courts [should] ask whether the offenses share such a concurrence of common features as to support the inference that they were committed pursuant to a common design." *Farmer v. State*, 133 Nev. 693, 699-700, 405 P.3d 114, 121 (2017).

Madison contends that counts 1-10 are unrelated to counts 11-16 and do not share "a concurrence of common features" supporting "the inference that they were committed pursuant to a common design." *Id.* We disagree. The four separate incidents all involve Madison and an overlapping group of individuals attempting to rob various places within a few days and a few miles of one another. The murder was not planned. Instead, it occurred during the commission of a string of robberies that *were* planned in a similar manner, by a common group of people, pursuant to the common goal of illegally obtaining money and/or items of value. Therefore, the district court did not abuse its discretion by concluding that all the offenses were committed pursuant to a common design.

Even if joinder was proper under NRS 174.155, a court may sever the charges if joinder would cause unfair prejudice. NRS 174.165(1). "To *require* severance, the defendant must demonstrate that a joint trial

would be manifestly prejudicial. The simultaneous trial of the offenses must render the trial fundamentally unfair, and hence, result in a violation of due process." *Rimer v. State*, 131 Nev. 307, 323-24, 351 P.3d 697, 709 (2015) (quoting *Honeycutt v. State*, 118 Nev. 660, 667-68, 56 P.3d 362, 367 (2002)).

Madison argues that evidence presented at trial relating to counts 1-10 prejudiced the jury against him as to counts 11-16. While there was potential for some prejudice to Madison by trying counts 1-10 along with counts 11-16, Madison has failed to show that joinder was so manifestly prejudicial as to require severance. "When some potential prejudice is present, it can usually be adequately addressed by a limiting instruction to the jury." *Tabish*, 119 Nev. at 304, 72 P.3d at 591. The jury here was instructed that "[e]ach charge and the evidence pertaining to it should be considered separately. The fact that you may find [Madison] guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged." Jurors are presumed to follow the instructions of the district court, *see Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006), and Madison points to nothing in the record indicating that the jury may have failed to follow this instruction. Additionally, there was substantial evidence of counts 11-16 for a jury to rely on in convicting Madison independent of any evidence relating to counts 1-10.

Because there is evidence to support the inference that all the offenses were committed pursuant to a common design, and because Madison has not demonstrated that he was manifestly prejudiced by joinder of the counts, we conclude that the district court did not abuse its discretion by denying Madison's motions to sever the counts.

Second, Madison contends that the sentences on his four convictions for burglary while in possession of a firearm were improperly enhanced by the district court pursuant to NRS 193.165. Sentencing decisions are reviewed for an abuse of discretion, and any statutory interpretation is reviewed de novo. *Locker v. State*, 138 Nev., Adv. Op. 62, 516 P.3d 149, 152 (2022).

NRS 193.165 provides for an additional penalty when a deadly weapon is used in the commission of a crime. However, we have consistently held that NRS 193.165 cannot be used to enhance the sentence for a burglary conviction. *See, e.g.*, *Funderburk v. State*, 125 Nev. 260, 264, 212 P.3d 337, 339 (2009); *Carr v. Sheriff*, 95 Nev. 688, 690, 601 P.2d 422, 424 (1979). Further, the statute under which Madison was convicted already has a self-contained deadly weapon enhancement, increasing the permissible sentencing range for a burglary when it is committed while in possession of a deadly weapon. NRS 205.060(5). The district court, therefore, abused its discretion by adding consecutive 2-5- or 4-10-year enhancements to each of Madison's burglary convictions pursuant to NRS 193.165.

The State argues that the error was harmless because the aggregate sentences are within the permissible 2-15-year range. We disagree because the additional 2-5 or 4-10 years were added consecutively to the underlying sentences. NRS 205.060(5) authorizes a single sentence between 2-15 years for a single count of burglary while in possession of a firearm. We therefore reverse Madison's sentences on his four convictions for burglary while in possession of a firearm and remand to the district court for resentencing on those convictions in accordance with NRS 205.060(5). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Stiglich

_____, J.
Pickering

_____, J.
Parraguirre

cc: Hon. Carli Lynn Kierny, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk