IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ROBERT WAGNER A/K/A CHARLES HANSON WYNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39388

FILED

NOV 21 2002

CLERK OF SUPREME COURT
J. Richards

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary and one count of robbery. The district court adjudicated appellant a habitual criminal with respect to both counts and sentenced him to two concurrent terms of life in prison with the possibility of parole after 10 years. Having determined that the district court may have improperly relied on a single prior felony conviction in adjudicating appellant a habitual criminal, this court remanded for a new sentencing hearing.[1] On remand, the district court considered several prior felonies and again adjudicated appellant a habitual criminal and sentenced him to two concurrent terms of life in prison with the possibility of parole after 10 years.[2]

Appellant first contends that the district court abused its discretion in adjudicating appellant a habitual criminal. Specifically, appellant alleges that "little or no thought was given to the magnitude o[f]

---

[1]Wynn v. State, Docket No. 36413 (Order of Remand, June 12, 2001).

[2]See NRS 207.010(1)(b) (providing that a person convicted of a felony, who has three prior felony convictions, may be sentenced to life in prison without the possibility of parole, life in prison with the possibility of parole after 10 years, or for a definite term of 25 years in prison with parole eligibility after 10 years).

the earlier convictions, their nature, or even whether certified copies existed to substantiate the same." We disagree.

First, the decision to adjudicate a criminal defendant a habitual criminal is left to the "'broadest kind of judicial discretion'" in determining whether habitual criminal adjudication "would serve the purpose of discouraging this repeat offender."[3] Further, this court does not require the articulation of talismanic phrases.[4] After listening to argument by both parties, the district court determined that habitual criminal adjudication was appropriate based upon appellant's following prior felony convictions: (1) 1989 conviction for burglary and robbery with the use of a deadly weapon; (2) 1978 conviction for robbery with the use of a deadly weapon; and (3) 1978 conviction for attempt to obtain money under false pretenses. Thus, it is clear from the record that the district court exercised its discretion in adjudicating appellant a habitual criminal,[5] and this court will not superimpose its view of a sentence "lawfully pronounced by our sentencing judges."[6] Second, although two of the prior convictions were approximately twenty-five years old, "NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the

---

[3]Tanksley v. State, 113 Nev. 997, 1004, 946 P.2d 148, 152 (1997) (quoting Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993)).

[4]Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

[5]See id. at 333, 996 P.2d at 893-94 ("As long as the record as a whole indicates that the sentencing court was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication and that the court exercised its discretion, the sentencing court has met its obligation under Nevada law.").

[6]Arajakis v. State, 108 Nev. 976, 984, 843 P.2d 800, 805 (1992).

discretion of the district court."[7] Finally, the record belies appellant's contention that the district court failed to receive certified copies of the prior felony convictions. At the sentencing hearing, the prosecutor presented certified copies of the relevant judgments of conviction to the district court. Thus, we conclude that appellant's claim that the district court abused its discretion in adjudicating appellant a habitual criminal lacks merit.

Appellant also contends that the sentence constitutes cruel and unusual punishment in violation of the United States Constitution because the sentence is disproportionate to the crime. We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[8] Regardless of its severity, a sentence that is 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.'"[9] This court has consistently afforded the district court wide discretion in its sentencing decision,[10] and will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or

---

[7]Id. at 983, 843 P.2d at 805.

[8]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

[9]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[10]See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

accusations founded on facts supported only by impalpable or highly suspect evidence."[11]

First, appellant's sentence is neither grossly disproportionate, nor does it shock the conscience. In addition to the three felony convictions relied upon by the district court, appellant has been convicted of a variety of felonies in a number of jurisdictions, beginning in 1944. Further, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Moreover, the sentence imposed was within the parameters provided by the relevant statutes.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Young

_____, J.
Agosti

cc: Hon. Jack Lehman, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

---

[11]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[12]See NRS 207.010(1)(b).