

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JOHN CAUSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42287

FILED

JUL 8 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of an explosive device by an incarcerated person. The district court adjudicated appellant Matthew John Causey as a habitual criminal and sentenced him to serve a prison term of 96 to 240 months.

Causey first contends that the district court erred in allowing the State's witnesses to testify because the State provided insufficient notice of their testimony in violation of NRS 174.234. Causey contends that he was prejudiced by the State's untimely disclosure because he believed the witnesses would be excluded under the statute and, consequently, "was lulled into complacency and failed to obtain [his] own witnesses to rebut the expert testimony." We conclude that Causey's contention lacks merit.

NRS 174.295(2) sets forth the remedy for discovery violations pursuant to NRS 174.234. Specifically, where a there has been a discovery violation, the district court "may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the

circumstances.”¹ “However, where the State’s non-compliance with a discovery order is inadvertent and the court takes appropriate action to protect the defendant against prejudice, there is no error justifying dismissal of the case.”²

Here, after considering the issue outside the presence of the jury, the district court allowed the State’s witnesses to testify, ruling that Causey was not prejudiced by State’s failure to file witness lists. We conclude that the district court did not err in allowing the witness testimony. Causey does not allege that the State’s failure to file the witness lists was intentional. Additionally, Causey had notice of the proposed testimony because the witnesses were listed on the information, and had either testified at the preliminary hearing or had filed an expert report in the case. Finally, we note that Causey did not request a continuance to review the State’s proposed witness testimony or to obtain his own rebuttal witnesses. Because Causey was not prejudiced by the untimely disclosure, the district court did not err in allowing the testimony.

Second, Causey contends that that his due process rights were violated at the sentencing hearing when the district court relied on testimony from an Ely State Prison caseworker. In particular, Causey notes that the caseworker testified about Causey’s prison disciplinary problems, including a prior assault, based on prison records, but had no first-hand knowledge of the underlying incidents for which Causey was disciplined. We conclude that Causey’s contention lacks merit.

¹NRS 174.295(2).

²State v. Tapia, 108 Nev. 494, 497, 835 P.2d 22, 24 (1992) (construing NRS 174.295).

As a preliminary matter, we note that the transcript of the sentencing hearing reveals that the prison caseworker was under oath and subject to cross-examination when he testified about Causey's prison disciplinary history.³ On cross-examination, the prison worker admitted that he had no personal knowledge of the prior incidents and that the assault charge arose from allegations made by a confidential informant who Causey was not allowed to cross-examine. To the extent that Causey argues that the district court erred in considering the prior assault because the evidence was impalpable, we conclude that contention lacks merit.

We have previously stated that the sentencing court is able "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant."⁴ This court will refrain from interfering with the sentence imposed "[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."⁵ Causey's conduct while in prison was a relevant consideration in determining his sentence, and the testimony based on Causey's prison file was not impalpable or highly suspect. Accordingly, the district court did not violate Causey's due process rights or abuse its discretion at sentencing.

Finally, Causey contends that the district court erred in adjudicating him as a habitual criminal because his 13-year-old conviction

³Cf. Buschauer v. State, 106 Nev. 890, 804 P.2d 1046 (1990).

⁴See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁵Id.

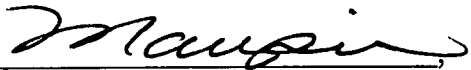
for possession of a controlled substance was too remote and trivial to be used to enhance his sentence. We conclude that Causey's contention lacks merit.

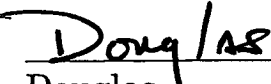
The district court may dismiss counts brought under the habitual criminal statute when the prior offenses are stale, trivial, or where an adjudication of habitual criminality would not serve the interests of the statute or justice.⁶ The habitual criminal statute, however, makes no special allowance for non-violent crimes; this is merely a consideration within the discretion of the district court.⁷ We conclude that, in light of the fact that Causey had the requisite number of prior felony convictions, one of which was for murder, the district court did not abuse its discretion in adjudicating him as a habitual criminal.⁸

Having considered Causey's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

⁶See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

⁷See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

⁸See Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996); Arajakis, 108 Nev. at 984, 843 P.2d at 805.

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Brian Sandoval/Ely
White Pine County Clerk