

IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY LEE MULLNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71030

FILED

NOV 15 2017

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

ORDER OF AFFIRMANCE

Appellant Troy Lee Mullner appeals his convictions for burglary, robbery, coercion, burglary while in possession of a deadly weapon, robbery with use of a deadly weapon, attempted robbery, and possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. We affirm.

Mullner's Sentence as an Habitual Criminal

Mullner argues that the district court should not have considered his prior conviction from 1984 in sentencing him as an habitual criminal because the conviction is stale and stems from an offense he committed as a minor. Mullner also asks the court to adopt a rule prohibiting a district court from considering juvenile offenses charged up to adult convictions in habitual criminal sentencing, a rule he contends is supported by *State v. Javier C.*, 128 Nev. 536, 289 P.3d 1194 (2012). We review a trial court's adjudication of a defendant as an habitual criminal under an abuse-of-discretion standard. See *Sessions v. State*, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).

Mullner's previous convictions were not stale

A district court may disregard prior convictions that are stale, trivial, or where habitual criminal adjudication “would not serve the purposes of the statute or the interests of justice.” *Id.* at 190, 789 P.2d at 1244 (reversing habitual criminal conviction where a defendant’s prior felony convictions were 23 to 30 years old and for non-violent crimes). Mullner’s three prior convictions span a period of 30 years, and are all for violent crimes. Further, Mullner’s oldest convictions were for burglary and robbery, the same offenses he most recently committed. Thus, unlike *Sessions*, Mullner’s prior convictions indicate he is a “career criminal[] who pose[s] a serious threat to public safety.” *Id.* at 191, 789 P.2d at 1245. Accordingly, the district court did not abuse its discretion in rejecting Mullner’s argument that his 1984 conviction was too stale to use for habitual criminal sentencing.

Mullner's prior conviction resulting from an offense committed as a minor could be used for habitual criminal sentencing

The district court did not abuse its discretion in using Mullner’s charged-up conviction for habitual criminal sentencing. When a juvenile is convicted and sentenced as an adult, that conviction can enhance a defendant’s punishment as an habitual criminal, provided the court had general jurisdiction to sentence the juvenile as an adult. 24 C.J.S. *Criminal Procedure and Rights of Accused* § 2462 (2016); see also *United States v. Graham*, 622 F.3d 445, 455-61 (6th Cir. 2010) (juvenile conduct for which the accused was charged and sentenced as an adult used as a prior felony for third strike); *Womack v. State*, Docket No. 61127 (Order of Affirmance, February 13, 2013) (prior felony conviction committed as a juvenile used for habitual criminal sentencing).

Mullner's argument that our decision in *State v. Javier C.* supports a rule prohibiting the use of such convictions in habitual criminal sentencing is unpersuasive. In *Javier C.*, the court held that the criminal statute for battery committed by a prisoner, NRS 200.481(2)(f), did not apply to an adjudicated juvenile delinquent because he was not a "prisoner" under the definition of NRS 193.022, which requires custody in the criminal context, and neither juvenile justice proceedings nor a delinquent adjudication are criminal in nature. 128 Nev. at 539-41, 289 P.3d at 1196-97. Here, the habitual criminal statute applies to a defendant previously convicted of "[a]ny felony," without regard for whether the conviction could have been (but was not) pursued as a juvenile offense. NRS 207.010(1)(b). A statute's plain meaning controls its interpretation, see *Bergna v. State*, 120 Nev. 869, 873, 102 P.3d 549, 551 (2004), and we find no ambiguity in the habitual criminal statute that would support reading it as Mullner asks us to do. Accordingly, we decline to adopt a ruling prohibiting a district court from considering felony convictions originating from juvenile offenses in habitual criminal sentencing.

Mullner's Sentence Does not Violate the Eighth Amendment

Mullner argues that his sentence is disproportionate because he did not cause any physical harm and stole only a few thousand dollars. The district court has "wide discretion" in its sentencing decisions. *Allred v. State*, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

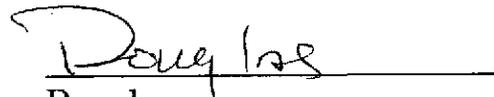
Mullner's sentence does not violate the Eighth Amendment. Mullner's three prior felonies entitled the court to sentence him as a large habitual criminal to: (1) life without the possibility of parole, (2) life with the possibility of parole after a minimum of ten years, or (3) a definite term of 25 years, with eligibility for parole after a minimum of ten. NRS 207.010(1)(b). Mullner's sentence of 31 years to life fits within the

statutory scheme and is not disproportionate because it is based on ten separate counts for violent crimes, including burglary and robbery with the use of a deadly weapon. *Allred*, 120 Nev. at 420, 92 P.3d at 1253 (“[A] sentence within the statutory limits is not ‘cruel and unusual punishment unless . . . the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’”).

Cumulative Error

Individually harmless errors may be cumulatively harmful and warrant reversal. *Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008). This court considers “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Id.* Here, Mullner failed to successfully argue any error, thus there is no error to cumulate. We therefore

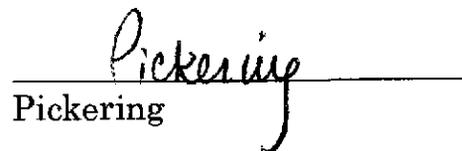
ORDER the judgment of the district court AFFIRMED.



Douglas J.



Gibbons J.



Pickering J.

cc: Hon. Valerie Adair, District Judge
Jean J. Schwartzner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk