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### Mullner v. State, 133 Nev. Adv. Op. 98 (Dec. 7, 2017)

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CRIMINAL LAW: SENTENCING

**Summary**

A court can use offenses committed as a juvenile, but charged and convicted as an adult, when it considers habitual criminal sentencing, especially if the offender’s past convictions are similar to the crime currently being considered for sentencing.

**Background**

Appellant appealed his convictions for burglary, robbery, coercion, burglary while in possession of a deadly weapon, robbery with a deadly weapon, attempted burglary, and possession of a firearm by a felon.

**Discussion**

*Mullner’s Sentence as an Habitual Criminal*

Mullner argued that the district court should not have considered a 1984 conviction when it sentenced him because he committed the offense when he was a minor and because the conviction was stale. Mullner also asked the Court to prohibit “juvenile offenses charged up to adult convictions in habitual criminal sentencing” as supported by *State v. Javier C.*<sup>2</sup> The Court reviewed the district court under the abuse of discretion standard.

*Mullner’s Previous Convictions were Not Stale*

The Court ruled that Mullner’s three prior convictions, although spanning thirty years, indicated he is a career criminal because they were for violent crimes similar to his most recent offense. The Court decided that Mullner posed a serious threat to public safety, and so the district court did not abuse its discretion.

*Mullner’s Prior Conviction Resulting from an Offense Committed as a Minor Could be Used for Habitual Criminal Sentencing*

The district court correctly used its discretion when it considered Mullner’s past convictions for habitual criminal sentencing. A juvenile can be convicted as an adult, and a court can use that conviction to determine habitual criminal sentencing. Mullner argued that *State v. Javier C.* prohibits this, but the Court disagreed with Mullner’s interpretation because that case involved a juvenile delinquent, which Mullner was not.<sup>3</sup> It did not matter that the court had the option to adjudicate him as a juvenile delinquent.

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<sup>1</sup> Joseph K. Fabbi.

<sup>2</sup> 128 Nev. 536, 289 P.3d 1194 (2012).

<sup>3</sup> *Id.*

### *Mullner's Sentence Does Not Violate the Eighth Amendment*

Mullner argued that because he did not physically harm anyone, his sentence is disproportionate to the crimes he committed. Mullner's three felonies allowed the court wide discretion to sentence him with: (1) life without parole, (2) life with parole eligibility after 10 years' incarceration, or (3) a 25-year term with parole eligibility after 10 years' incarceration. The district court sentenced Mullner to 31 years' incarceration. The Court ruled that that sentence was proportionate to the ten separate violent crimes the appellant committed. Therefore, Mullner's sentence does not violate the Eighth Amendment.

### *Cumulative Error*

The Court should reverse a lower court's decision if multiple, harmless errors in a case are cumulatively harmful to the appellant. Here, this Court considered three factors: (1) whether the issue of guilt is close, (2) the amount and character of the error, and (3) the seriousness of the crime an appellant has been charged with. Mullner failed to illustrate cumulated error.

### **Conclusion**

The Court affirmed the district court's decision when it held that adult convictions for offenses committed as a minor should be considered in Mullner's sentencing as a habitual criminal. Further, Mullner should be sentenced as a habitual criminal because of his prior record.