IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG DUANE MCNEIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42893

FILED

AUG 26 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Rubade
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of third-offense driving under the influence (DUI), a category B felony. First Judicial District Court, Carson City; Michael R. Griffin, Judge. The district court sentenced appellant Craig Duane McNeil to serve a prison term of 12-30 months and ordered him to pay a fine of $2,000.00.

McNeil's sole contention is that the district court erred in denying his motion to suppress the State's use of a prior misdemeanor DUI conviction for enhancement purposes. McNeil claims that because his most recent prior conviction in 1999 in the Reno Municipal Court was the result of a guilty plea to first-offense DUI, that he is "entitled to have that offense treated as a first offense for the purpose of any subsequent sentencing enhancement." McNeil argues that he was never informed that the 1999 conviction could be treated as a second-offense in future proceedings, and therefore, "[t]he State must be held to the limitations of that plea" and the instant conviction treated as, "at most," a second offense. According to the transcript of the sentencing hearing, this issue was expressly preserved for review on appeal. We conclude that McNeil's contention is without merit.

In State v. Crist,[1] Perry v. State,[2] and State v. Smith,[3] we held that a second DUI conviction may not be used to enhance a conviction for a third DUI arrest to a felony where the second conviction was obtained pursuant to a plea agreement specifically permitting the defendant to enter a plea of guilty to a first-offense DUI and limiting the use of the conviction for enhancement purposes. The decisions in those cases "were based solely on the necessity of upholding the integrity of plea bargains and the reasonable expectations of the parties relating thereto."[4] Accordingly, the rule that we recognized in those cases is not applicable where "there is no plea agreement limiting the use of the prior conviction for enhancement purposes."[5] Under such circumstances, any two prior DUI offenses may be used to enhance a subsequent DUI to a felony as long as the prior offenses occurred within 7 years of the principal offense and regardless of whether the prior offenses were punished as "first" or "second" offenses.[6]

We conclude that the district court did not err in denying McNeil's motion to suppress. McNeil was originally charged with second-offense DUI in 1999 based on a 1996 DUI conviction in California. The State, however, was unable to provide certified copies of the 1996

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[1]108 Nev. 1058, 843 P.2d 368 (1992).

[2]106 Nev. 436, 794 P.2d 723 (1990).

[3]105 Nev. 293, 774 P.2d 1037 (1989).

[4]Speer v. State, 116 Nev. 677, 680, 5 P.3d 1063, 1065 (2000).

[5]Id.

[6]Id.

conviction at the time of the entry of the plea and sentencing hearing, and instead of asking for a continuance, the State chose to proceed and the municipal court accepted McNeil's guilty plea to first-offense DUI. The only negotiations involved the State agreeing to dismiss a headlight violation charge.

In the instant case, the district court conducted a hearing on McNeil's motion to suppress and determined that the plea agreement prior to the 1999 conviction did not expressly limit the use of the conviction for enhancement purposes. Moreover, McNeil has failed to present any evidence that an agreement existed to limit the use of the 1999 conviction for enhancement purposes, and at no point in the proceedings has McNeil actually challenged the validity of the 1996 conviction in California. Therefore, based on all of the above, we conclude that the instant DUI conviction was properly enhanced to a category B felony.[7]

Accordingly, having considered McNeil's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

[7]See NRS 484.3792(1)(c).

cc: Hon. Michael R. Griffin, District Judge
Nathan Tod Young
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk