

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEE WAHLBERG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50056

**FILED**

DEC 10 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence (DUI). Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Robert Lee Wahlberg to serve a prison term of 24-60 months and ordered him to pay a fine of \$2,000.<sup>1</sup>

Wahlberg contends that the district court erred by enhancing the instant DUI to a felony because the State failed to provide the necessary proof of the prior conviction and he never stipulated to its existence. Wahlberg claims that his offense should be punished as a misdemeanor. We disagree.

The criminal complaint, filed in the Sparks Justice Court on June 1, 2006, charged Wahlberg with felony DUI "after having been previously convicted of Felony Driving Under the Influence in the Second Judicial District Court, Washoe County, Nevada, on May 24, 2002, for an offense which occurred on May 2, 2002." At the preliminary hearing, the State provided the justice court with a certified copy of Wahlberg's 2002

---

<sup>1</sup>See NRS 484.3792(2)(a).

conviction and moved for its admission. Defense counsel reviewed the judgment of conviction and stated that he would not object to its admission. The justice court bound Wahlberg over to the district court to stand trial on the one count of felony DUI.


Thereafter, a criminal information was filed in the district court, again citing to Wahlberg's felony DUI conviction in 2002, and charging him with felony DUI. At the plea canvass, defense counsel informed the district court that Wahlberg "has agreed to plead guilty to driving under the influence with a prior felony in District Court case number CR06-2778." (Emphasis added.) The prosecutor, as well, mentioned the prior felony DUI conviction after informing Wahlberg of the elements of the crime he was charged with. Wahlberg was thoroughly canvassed prior to the entry of his plea, and at no point in the proceeding did Wahlberg object or challenge the existence or validity of the prior felony DUI conviction. The formal guilty plea memorandum, signed by Wahlberg, also referred to the 2002 felony DUI conviction.

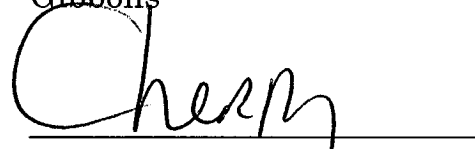
The Division of Parole and Probation prepared a presentence investigation report (PSI) for sentencing which detailed Wahlberg's extensive criminal history, including his several DUI convictions. At the sentencing hearing, defense counsel informed the district court that he had reviewed the PSI with Wahlberg, and that there were "no factual additions or corrections to make to the report." Defense counsel referred to the instant offense as a "second-time felony driving under the influence charge" and asked the district court to impose a prison term of 24-60 months. At no point in the proceeding did Wahlberg object to the use of the prior conviction for enhancement purposes or challenge its existence or validity.

Based on all of the above, we conclude that the district court did not err by enhancing Wahlberg's instant DUI to a felony. The State provided a certified copy of Wahlberg's previous felony DUI conviction at the preliminary hearing, and at all subsequent proceedings, Wahlberg both implicitly and explicitly acknowledged the existence of the prior conviction, effectively stipulating to its use for enhancement purposes.<sup>2</sup> As noted, Wahlberg never objected below, and on appeal, does not challenge the existence or validity of the prior conviction.

Therefore, having considered Wahlberg's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

---

<sup>2</sup>See generally Krauss v. State, 116 Nev. 307, 998 P.2d 163 (2000); Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003).