

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS WAYNE SHAFFER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51741

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence (DUI). Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge. The district court sentenced appellant Douglas Shaffer to a prison term of 24 to 60 months.

First, Shaffer contends that the 2005 amendment to NRS 484.3792, as applied in this case, violates the Ex Post Facto Clause of the United States and Nevada Constitutions¹ and his right to due process. In 1998, at the time of Shaffer's prior felony DUI conviction, the law provided that that conviction would only be considered for seven years for the purposes of enhancement. In 2005, the law was amended so that if an individual had previously been convicted of felony DUI and was convicted of a subsequent DUI, he was guilty of a category B felony regardless of how much time has passed since the last felony conviction.²

¹U.S. Const. art. I, § 10; Nev. Const. art. 1, § 15.

²2005 Nev. Stat. Spec. Sess., ch. 6, § 15, at 103.

This court has previously considered a similar case and held that the Ex Post Facto Clause was not implicated because “[o]n the day [appellant] elected to commit the offense here under consideration, reference to the statute would have indicated precisely the penalty he risked.”³ In this case, regardless of what the law was at the time of Shaffer’s previous conviction, when he committed the instant offense the statute provided that he would be guilty of a category B felony because of his prior felony DUI. Accordingly, we conclude that the application of the 2005 amendment to NRS 484.3792 did not violate the Ex Post Facto Clause and Shaffer’s right to due process.

Second, Shaffer argues that convicting him of a felony in the instant case amounts to a violation of the plea agreement in his 1998 case. Shaffer argues that in his 1998 plea agreement the State made an inherent promise that if he was not convicted of a DUI for seven years, any future DUI would be treated as a misdemeanor. Shaffer alleges that the State broke this promise by applying the 2005 amendment to NRS 484.3792 to the instant offense. We reject this argument.

Shaffer’s 1998 guilty plea agreement did not limit the 1998 felony DUI conviction for any enhancement purposes.⁴ Further, the record

³Dixon v. State, 103 Nev. 272, 274, 737 P.2d 1162, 1164 (1987).

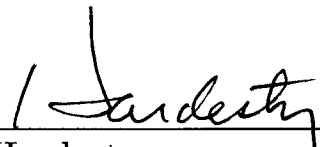
⁴Compare State v. Smith, 105 Nev. 293, 298-99, 774 P.2d 1037, 1041 (1989) (holding that a second DUI conviction could not be used to enhance a subsequent DUI conviction to a felony when the second conviction was obtained pursuant to a guilty plea agreement that specifically permitted the defendant to plead guilty to a first-offense DUI and limited the use of that conviction for enhancement purposes), with Speer v. State, 116 Nev. 677, 680, 5 P.3d 1063, 1065 (2000) (holding that the rule recognized in *continued on next page . . .*


does not demonstrate that Shaffer was ever advised that the 1998 felony DUI conviction would be treated as anything other than a felony conviction. Accordingly, we conclude that the application of the 2005 amendment to NRS 484.3792 did not constitute a violation or breach of Shaffer's 1998 plea agreement.

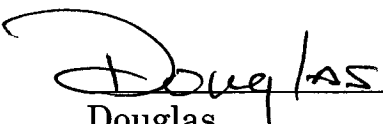
Third, Shaffer contends that the application of the 2005 amendment to NRS 484.3792 violated his right to equal protection. We reject this claim. Shaffer has not demonstrated that the 2005 amendment to NRS 484.3792 is not being equally applied to all similarly situated individuals.⁵

Having considered Shaffer's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

... continued

Smith is not applicable where the plea agreement does not limit the use of the prior conviction for enhancement purposes).

⁵See U.S. Const. amend. XIV, § 1; Nev. Const. art. 4, § 21.

cc: Hon. Richard Wagner, District Judge
Marc P. Picker
Attorney General Catherine Cortez Masto/Carson City
Humboldt County District Attorney
Humboldt County Clerk