

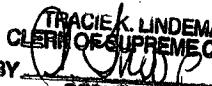
IN THE SUPREME COURT OF THE STATE OF NEVADA

SHARON JANE ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51924

FILED

JAN 30 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Sharon Jane Ross to serve a prison term of 24 to 72 months.

First, Ross contends that the district court erred in denying her pretrial petition for a writ of habeas corpus, which asserted that there was insufficient evidence presented upon which to bind her over for trial. Specifically, she asserts that the State failed to introduce a certified copy of her prior felony DUI conviction as required by NRS 52.265(1).

Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)) (first alteration in original). NRS 174.035(3) permits, with the consent of

the district court and the district attorney, a defendant pleading guilty to reserve in writing the right to appeal an adverse determination on a specified pretrial motion.

In the instant case, Ross pleaded guilty immediately after the district court denied her pretrial petition for a writ of habeas corpus. However, Ross does not assert, and the record does not indicate, that she preserved the right to appeal this issue pursuant to NRS 174.035(3) prior to pleading guilty. Therefore, we decline to consider the merits of Ross' contention because her claim was waived when she entered her guilty plea.

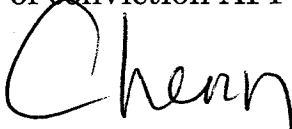
Second, Ross contends that the 2005 amendment to NRS 484.3792, as applied to this case, violates the Ex Post Facto Clause of the United States and Nevada Constitutions. See U.S. Const. art. I, § 10, cl. 1; Nev. Const. art. 1, § 15. Prior to the 2005 amendment, all second DUI offenses that occurred within seven years were treated as misdemeanors. See 2003 Nev. Stat., ch. 67, § 1, at 446-48, and ch. 284, § 49, at 1490-92. 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, she was guilty of a category B felony regardless of how much time had passed since the last felony conviction. 2005 Nev. Stat. Spec. Sess., ch. 6, § 15, at 103. She asserts that she was not put on notice at the time of her 2001 conviction that all subsequent DUI convictions would be treated as felonies.

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 [she]

risked.” Dixon v. State, 103 Nev. 272, 274, 737 P.2d 1162, 1164 (1987). In this case, regardless of what the law was at the time of Ross’ previous conviction, when she committed the instant offense the statute provided that she would be guilty of a category B felony because of her 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.

Having considered Ross’ contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.

Cherry


_____, J.

Saitta


_____, J.

Gibbons

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk