IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALAN MAUGHAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55001

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony domestic battery, third offense. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

Appellant Robert Alan Maughan was charged by information with "domestic battery, fourth offense." The information alleged that, in addition to the instant battery, Maughan had been convicted of domestic battery in 2004, 2006, and 2008. Shortly after the information was filed, Maughan agreed to plead guilty to domestic battery, third offense. The plea agreement stated that "at sentencing, the Court will determine if I have two or more prior battery convictions" and that if the district court does not so find, then the agreed-to count of domestic battery would be charged as a misdemeanor. There is no evidence in the record, beyond the allegations in the information, that the State ever produced any evidence of Maughan's prior convictions.

On appeal, Maughan asserts that the State's failure to affirmatively prove his prior convictions is a due process violation that voids his enhancement. We agree. The statute under which Maughan was convicted provides that, in order for the domestic battery to be

enhanced, "[t]he facts concerning a prior offense must be alleged in the . . . information [and] must be proved at the time of sentencing." NRS 200.485(4). The State, accordingly, has the burden to present prima facie evidence of the prior conviction, see Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991), unless a defendant waives or stipulates as to their proof, see Hodges v. State, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003).

At the sentencing hearing, Maughan's counsel referenced "a criminal history which the Court will consider." The prosecutor reminded the district court that "[h]e's already served time in prison twice for felony domestic batteries." However, Maughan neither entered into a written stipulation as to his prior convictions nor made such a stipulation in his plea agreement. Cf. id. at 484-85, 78 P.3d at 70 (concluding that where defendant stipulated that "I am a habitual criminal," the priors were detailed in a presentence report that defendant affirmed had no errors, and defendant submitted other written stipulations to the prior convictions, defendant had "effectively stipulated" to fact of his prior convictions). Additionally, Maughan never acknowledged the validity of the prior convictions in a plea canvass or other colloquy with the district court. Cf. Krauss v. State, 116 Nev. 307, 309-311, 998 P.2d 163, 164-65 (2000) (concluding that defendant's statements on the record constituted a waiver and obviated the need for the State to offer proof of his prior convictions).

We therefore conclude that because Maughan did not stipulate to his prior convictions and they were not proven at sentencing as required by the plain language of the statute, his enhancements are void and he must be resentenced as a first-time domestic battery offender.

Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. John P. Davis, District Judge
Gibson & Kuehn
Attorney General/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk