

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35019

SCOTT NOEL HAINSWORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FILED

APR 04 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence. The district court sentenced Hainsworth to twelve (12) to thirty (30) months in the Nevada State Prison. The district court further ordered Hainsworth to pay a fine of \$2,000.00.

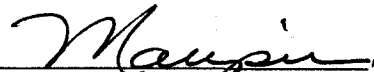
Hainsworth contends that his prior conviction in Ely Municipal Court for driving under the influence (DUI) should not have been used to enhance the present offense to a felony. The Ely offense was charged as a first-offense DUI, when it was actually a second-offense DUI. Hainsworth argues that the Ely offense must therefore be treated as a first offense for all purposes. Hainsworth relies on this court's decision in *State v. Smith*, 105 Nev. 293, 298, 774 P.2d 1037, 1041 (1989). In *Smith*, *Smith* negotiated a plea of first-offense DUI when she was charged with second-offense DUI. This court held that using the prior conviction for enhancement would violate the spirit of the plea bargain because "Smith's 1986 guilty plea was induced, at least in part, by the knowledge that a first-time offense, for purposes of minimizing criminal penalties for future drunk-driving convictions, was preferable to a second offense." *Id.*

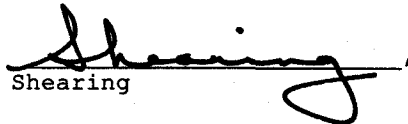
00-05365

Unlike the appellant in Smith, Hainsworth's treatment as a first offender in the Ely conviction was not the result of a negotiated plea bargain on that specific issue. Accordingly, we conclude that the district court properly sentenced Hainsworth for third offense DUI. Grover v. State, 109 Nev. 1019, 1020, 862 P.2d 421, 422 (1993).

Having considered appellant's contention and concluded it is without merit, we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Merlyn H. Hoyt, District Judge
Attorney General
White Pine County District Attorney
State Public Defender
White Pine County Clerk