

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE D. RAMIREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35284

**FILED**

JUL 10 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence in violation of NRS 484.379 and 484.3792. The district court sentenced appellant to 12 to 30 months in the Nevada State Prison and ordered appellant to pay a \$2,000.00 fine.

Appellant's sole contention is that the State failed to establish by proof beyond a reasonable doubt that appellant was the individual named in one of the prior DUI convictions offered by the State for enhancement purposes. At a hearing regarding the validity of the alleged prior convictions, appellant testified that he was not the person named in a 1993 misdemeanor DUI conviction in Wendover, Nevada. Appellant further testified that the handwriting on the documents offered to prove the 1993 conviction was not his handwriting. Appellant contends that this testimony is sufficient to create a reasonable doubt and preclude use of the 1993 Wendover conviction to enhance the instant offense to a felony. We disagree.

NRS 484.3792(2) provides, in relevant part: "The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the

jury or proved at trial but must be proved at the time of sentencing." This court has indicated that due process requires that the State shoulder the burden of proving beyond a reasonable doubt the elements of a sentence enhancement pursuant to NRS 484.3792. See Phipps v. State, 111 Nev. 1276, 1280, 903 P.2d 820, 823 (1995).

In this case, the State presented documentary evidence indicating that appellant had waived his right to an attorney and pleaded guilty to misdemeanor DUI in the 1993 Wendover proceedings. Additionally, a law enforcement officer working at the Elko County Jail testified that she knew appellant and that appellant was in the jail during the times relevant to the sentence for the 1993 Wendover conviction. The judge who presided over the misdemeanor proceedings identified appellant as the individual who was convicted of misdemeanor DUI in 1993 in Wendover, Nevada. Finally, the State presented the testimony of a handwriting expert who opined that the handwriting on the documents evidencing the 1993 conviction matched appellant's handwriting on documents evidencing another DUI conviction that appellant had not challenged.

The sentencing judge could reasonably infer from the evidence presented that appellant had sustained a misdemeanor DUI conviction in 1993 in Wendover, Nevada. It was for the sentencing court to determine the weight and credibility to give conflicting testimony, and that determination will not be disturbed on appeal where, as here, substantial evidence supports the court's finding that the State proved the prior convictions beyond a reasonable doubt. See generally McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (stating general proposition that it is role of trier of fact to assess weight of evidence and determine credibility of witnesses).

Having considered appellant's contention and concluded that it lacks merit, we

ORDER this appeal dismissed.

Young J.

Agosti J.

Leavitt J.

cc: Hon. Jack B. Ames, District Judge  
Attorney General  
Elko County District Attorney  
Lockie & Macfarlan  
Elko County Clerk