

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DUANE DOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35824

FILED

JUN 12 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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 NRS 484.3792. The district court sentenced appellant to twenty (20) to sixty (60) months in prison.

Appellant contends that the district court erred in refusing to strike one of his prior convictions for driving under the influence (DUI). In particular, appellant alleges that his 1993 felony DUI conviction from Washoe County, Nevada is not valid for purposes of enhancing the instant offense to a felony because the trial judge who accepted appellant's guilty plea in the 1993 case failed to conduct a sufficient oral plea canvass. We disagree.

This court has held that a prior felony conviction that is constitutionally infirm may not be used for enhancement purposes. See Dressler v. State, 107 Nev. 686, 697-98, 819 P.2d 1288, 1295-96 (1991). A judgment of

conviction is entitled to a presumption of regularity and constitutes prima facie evidence of the existence of the prior conviction. See id. at 693, 697, 819 P.2d at 1292, 1295. "Such evidence of a prior conviction shall be admitted for enhancement purposes so long as the record of that conviction does not, on its face, raise a presumption of constitutional infirmity." Id. at 697-98, 819 P.2d at 1295-96. If the record does not raise a presumption of constitutional infirmity, the defendant must establish by a preponderance of the evidence, that the prior conviction is constitutionally infirm. Id. at 698, 819 P.2d at 1296. The constitutional validity of a prior felony conviction is evaluated pursuant to the standard of review set forth in Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986). See Dressler, 107 Nev. at 698 & n.7, 819 P.2d at 1296 & n.7. Moreover, where the defendant was represented by counsel when convicted of a prior offense, it can "be safely presumed that the 'spirit of constitutional principles' was honored in that earlier proceeding." Davenport v. State, 112 Nev. 475, 478, 915 P.2d 787, 880 (1996).

In the instant case, no constitutional infirmity appears on the face of appellant's prior Washoe County conviction. The record demonstrates, for example, that appellant was represented by counsel throughout the Washoe County proceedings. Furthermore, we have reviewed the oral plea canvass conducted in connection with the Washoe County

proceedings and conclude that the totality of the circumstances demonstrate that the Washoe County conviction is constitutionally valid. Therefore, the district court properly used the Washoe County conviction to enhance the instant offense to a felony. Accordingly, we conclude that appellant's contention lacks merit and we

ORDER this appeal dismissed

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
John E. Oakes
Washoe County Clerk