

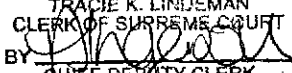
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ANTHONY AMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69640

FILED

JUL 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of burglary while in possession of a deadly weapon, carrying a concealed firearm or other deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and felon in possession of a firearm. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Mark Ames claims the district court erred in ruling a witness's original conviction could not be used as impeachment evidence. He observes NRS 50.095(1) states that, "For the purpose of attacking the credibility of a witness, evidence that the witness *has been convicted* of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which the witness was convicted." (Emphasis added.) And he argues the plain language of this statute permits the cross-examination of witnesses regarding their prior felony convictions even if those convictions were subsequently reduced to gross misdemeanors.

16-900843


“[T]he decision whether to admit a prior conviction for impeachment purposes rests within the sound discretion of the trial court, and will not be reversed absent a clear showing of abuse.” *Pineda v. State*, 120 Nev. 204, 210, 88 P.3d 827, 832 (2004) (internal quotation marks omitted).


The record reveals Ames sought to impeach the credibility of a prosecution witness by questioning him about his prior felony conviction. The State informed the district court that its witness, Rick Gomez, had previously entered into a plea agreement with a drop-down provision. Gomez pleaded guilty to a felony, he completed his probation, and he was allowed to withdraw his plea and plead guilty to a gross misdemeanor. The State argued Gomez does not have a felony conviction; he has a gross misdemeanor conviction. The district court determined “in order for [Gomez] to get the drop-down, the other charge would have had to be withdrawn by the district court. That’s just not really in existence anymore. The only thing that’s been entered is the gross misdemeanor conviction.”


Based on this record, we conclude the district court did not clearly abuse its discretion by refusing to admit evidence of Gomez’s prior conviction. See NRS 176.165 (“[T]he court after sentence may *set aside* the judgment of conviction and permit the defendant to withdraw the plea.” (emphasis added)); *Black’s Law Dictionary* 955 (6th ed. abridged 1991) (defining “set aside” as “[t]o reverse, vacate, cancel, annul, or revoke a judgment”); see generally *United States v. Hidalgo*, 932 F.2d 805, 807 (9th Cir. 1991) (observing “it appears elementary to us that when the verdict of

guilty was vacated and set aside and the information dismissed as to [the defendant's conviction], that conviction no longer exists"). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Michael P. Printy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk