

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDY TRIANA, A/K/A ERIC TRIAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74556

FILED

MAR 28 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence (DUI) with one or more prior felony DUI convictions. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant argues that his plea should be treated as a plea to a misdemeanor because the statutes in effect at the time of his previous DUI conviction have since been repealed and replaced. However, appellant failed to raise this argument below, and we decline to consider it in the first instance on appeal. *See Rimer v. State*, 131 Nev. 307, 328 n.3, 351 P.3d 697, 713 n.3 (2015).

Next, appellant argues that his plea should be treated as a plea to a misdemeanor DUI because of the amount of time that has elapsed between his previous DUI conviction and the instant offense. To the extent appellant “references and incorporates” a document filed in the district court, “[p]arties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court . . . to such briefs or memoranda for the arguments on the merits of the appeal.” NRAP 28(e)(2).

Appellant was previously convicted of misdemeanor driving under the influence, a second offense, after his offense was reduced pursuant to appellant's successful completion of a treatment program. See NRS 484C.340. Such a reduced conviction is specifically considered a valid prior conviction for purposes of driving under the influence with one or more prior felony DUI convictions. See NRS 484C.410(1)(e). There is no time limit within which the prior offense must have occurred; therefore, appellant's argument regarding the amount of time between his previous conviction and the instant offense does not warrant relief.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.  
Hardesty

Stiglich, J.  
Stiglich

Silver, J.  
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Mueller Hinds & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk