

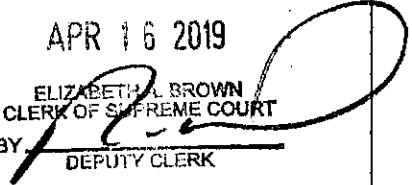
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN ROBERT WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74930-COA

**FILED**

APR 16 2019

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Alan Robert White appeals from a judgment of conviction entered pursuant to a guilty plea of felony driving under the influence of intoxicating liquor. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

First, White argues the district court erroneously enhanced his driving-under-the-influence (DUI) offense to a felony. White asserts the State failed to prove the constitutional validity of his prior felony DUI conviction because it failed to show he was represented by counsel or waived his right to counsel and the documentation concerning that conviction did not contain the date of the offense or a file stamp. White also contends the documentation concerning the prior DUI is insufficient to prove the constitutional validity of that conviction because it lists different Colorado counties.

To use a prior felony conviction to enhance a DUI conviction, the State must bear the initial burden of production, which is met by presenting prima facie evidence of the existence of the prior conviction. *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). If the record of the prior conviction, on its face, raises a presumption of

constitutional infirmity, then the State must prove by a preponderance of the evidence that the prior conviction is constitutionally valid. *Id.* at 697-98, 819 P.2d at 1295-96. However, if the record does not, on its face, raise a presumption of constitutional infirmity, then the conviction is afforded a presumption of regularity. *Id.* at 698, 819 P.2d at 1296. To overcome the presumption of regularity, the defendant must establish through a preponderance of the evidence that the prior conviction is constitutionally infirm. *Id.*

At the initial sentencing hearing, the State met its initial burden of production by presenting a sentence order for White's 2010 Colorado felony DUI conviction. White acknowledged that he had no issue with the prior conviction, but the district court expressed concern that the sentence order did not state whether White had been represented by counsel or had waived his right to counsel. The district court then continued the sentencing hearing in order for the State to provide additional evidence concerning the Colorado conviction.

The State later filed additional documents stemming from the 2010 Colorado conviction. The district court reviewed the documents and found that they clearly demonstrated White was represented by counsel. The district court further found the documents showed White had been advised of his trial rights and properly waived those rights when entering a guilty plea to a felony DUI. The district court also concluded White was convicted on March 22, 2010, and the Colorado documents listed different counties in different areas due to the nature of Colorado's combined court system. The district court therefore concluded the prior DUI was

constitutionally valid for use in enhancing the instant offense to a felony pursuant to NRS 484C.410(1).<sup>1</sup>

Although we appreciate the district court's concern regarding the constitutional validity of White's prior conviction, here, where the State met its burden by presenting prima facie evidence of the existence of the prior felony conviction and White did not attempt to challenge the constitutional validity of the prior conviction, no further inquiry into the constitutional validity of the prior felony conviction was necessary. The sentencing order presented by the State is distinguishable from the prior judgments of conviction discussed in *Scott v. State*, 97 Nev. 318, 630 P.2d 257 (1981), and the sentencing order's silence as to whether White had been represented by counsel or waived his right to counsel did not, on its face, raise a presumption of constitutional infirmity, see *Dressler*, 107 Nev. at 695 n.5, 819 P.2d at 1294 n.5. Because White has not demonstrated on appeal that the convictions are constitutionally infirm, we conclude the district court properly relied on the prior convictions to enhance White's sentence.<sup>2</sup>

Second, White argues the district court erred by continuing the sentencing hearing after the State failed to prove the constitutional validity of the prior DUI conviction. "This court reviews a district court's decision

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<sup>1</sup>The record demonstrates Judge Dobrescu presided over the initial sentencing hearing. Judge Fairman found White's prior felony DUI conviction was constitutionally valid and presided over the later sentencing hearing.


<sup>2</sup>White also argues the State failed to demonstrate he committed the prior DUI offense within seven years of this offense as required by NRS 484C.400(1)(c) and NRS 484C.400(2). However, those statutes are not applicable to White's conviction as he was convicted pursuant to NRS 484C.410(1), as his prior offense was a felony.


regarding a motion for continuance for an abuse of discretion.” *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). In order to demonstrate the district court abused its discretion by continuing the hearing, White must demonstrate he was prejudiced by the district court’s decision. *See id.* Here, the State presented prima facie evidence of White’s prior felony DUI conviction at the initial sentencing hearing, and White acknowledged at that hearing he had no issues or objections to his prior felony conviction. Given these circumstances, we conclude White has not demonstrated the district court abused its discretion by granting a continuance to allow the State to obtain additional information to address the district court’s concerns.

Third, White argues the district court erred in permitting the State to amend the information following the initial sentencing hearing after it obtained additional information concerning the 2010 Colorado conviction. In the information, the State must make a good-faith effort to describe the prior conviction as accurately as possible, and “unless the defendant can show that an omission or inaccuracy in describing a prior conviction has prejudiced him,” the State may use that prior conviction for enhancement of the defendant’s sentence. *Dressler*, 107 Nev. at 689, 819 P.2d at 1290. Here, the information initially stated White had previously been convicted of a felony DUI on or about January 5, 2010, in LaPlata County, Colorado. Following the district court’s request for further information concerning that conviction, the State moved to amend the information to state that White had previously been convicted of a felony DUI on or about March 22, 2010 in Dolores County, Colorado. The district court permitted the information to be amended because it found White was not prejudiced as he had sufficient notice of the prior conviction and had

enough information to challenge the validity of the prior conviction. Given the record before this court, we conclude White fails to demonstrate the district court erred in finding he was not prejudiced by the amendment of the information. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Gary Fairman, District Judge  
White Pine County Public Defender  
Attorney General/Carson City  
White Pine County District Attorney  
White Pine County Clerk