IN THE SUPREME COURT OF THE STATE OF NEVADA

COLLIE JASON MACK,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37221

FILED

MAY 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence in violation of NRS 484.379 and 484.3792(1)(c). The district court sentenced appellant to serve 28 to 72 months in prison and to pay a $2,000.00 fine.

Appellant contends that the State failed to prove that his prior DUI convictions in Mineral County and Nye County were for offenses that occurred within seven years of the instant offense. In particular, appellant complains that the State failed to prove the dates on which the prior offenses occurred. We disagree.

NRS 484.3792(2) provides, "An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions." In Pfohlman v. State,[1] we concluded that because this provision refers to occurrences rather than convictions, a prior offense that occurred more than seven years before the principal offense may not be used to enhance the punishment for the principal offense. The State bears the

[1]107 Nev. 552, 554, 816 P.2d 450, 450-51 (1991).

burden of proving that the prior offenses occurred within seven years of the principal offense.[2]

Here, the State presented judgments of conviction to establish the prior convictions in Mineral County and Nye County. Although the judgments of conviction do not state the offense dates, the State also presented certified copies of the criminal complaint for each case. The criminal complaint for the Mineral County offense alleges that the offense occurred on or about June 11, 1995. The criminal complaint for the Nye County offense alleges that the offense occurred on or about February 11, 1996.

We conclude that the certified copies of the criminal complaints for the prior convictions are sufficient proof of the dates on which the prior offenses occurred.[3] Those documents establish that the prior offenses occurred within seven years of the instant offense, which occurred on April 27, 2000.

However, appellant argues that the State failed to establish that the criminal complaints were for the offenses evidenced by the judgments of conviction offered by the State because the justice court criminal complaint numbers are not referenced in the judgments of conviction. This argument is

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[2]Phipps v. State, 111 Nev. 1276, 1280-81, 903 P.2d 820, 823 (1995).

[3]See generally Pettipas v. State, 106 Nev. 377, 379, 794 P.2d 705, 706 (1990) (holding that certified copies of docket sheets and other documents are sufficient proof of prior convictions); Isom v. State, 105 Nev. 391, 394, 776 P.2d 543, 546 (1989) (holding that complaint, plea and sentence are sufficient evidence to establish prior conviction for offense occurring within seven years of principal offense).

raised for the first time on appeal. Accordingly, we decline to consider it.[4]

For the reasons stated above, we conclude that the State presented sufficient evidence that the prior offenses occurred within seven years of the instant offense. We therefore conclude that the district court did not err in using the prior convictions to enhance the instant offense to a felony. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. John P. Davis, District Judge
Attorney General
Mineral County District Attorney
Williams & Emm
Mineral County Clerk

[4]See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (stating that appellant is not permitted to change theory underlying assignment of error on appeal).