IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTA ELIZA MCCRACKEN-HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37908

FILED

AUG 24 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of driving under the influence of alcohol, third offense. The district court sentenced appellant to a prison term of 12 to 30 months, and ordered appellant to pay a fine in the amount of $2,000.00.

Appellant contends that the district court erred by denying her motion to suppress her second DUI conviction because appellant was sentenced as a first-time offender in that conviction. Appellant therefore argues that the instant offense could not be enhanced to a felony.

The conviction being challenged by appellant was entered in the Sparks Justice Court on January 7, 1999, pursuant to a bench trial. At the time the State filed the complaint in that case, appellant's 1993 DUI conviction apparently did not show up on the police report, and she was therefore charged as a first-time offender, rather than for second-offense DUI. At trial and sentencing, although the State was aware of the 1993 conviction, the State did not offer proof of the conviction, and appellant was therefore convicted of and sentenced for a first offense.

In State v. Crist,[1] Perry v. State,[2] and State v. Smith,[3] we held that a second DUI conviction may not be used to enhance a conviction for a third DUI arrest to a felony where

[1]108 Nev. 1058, 843 P.2d 368 (1992).

[2]106 Nev. 436, 794 P.2d 723 (1990).

[3]105 Nev. 293, 774 P.2d 1037 (1989).

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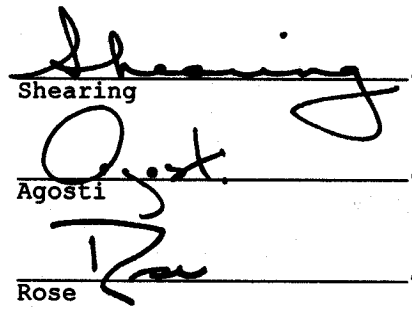
the second conviction was obtained pursuant to a plea agreement specifically permitting the defendant to enter a plea of guilty to a first offense DUI and limiting the use of the conviction for enhancement purposes. The decisions in those cases were "based solely on the necessity of upholding the integrity of plea bargains and the reasonable expectations of the parties relating thereto."[4] Accordingly, the rule that we recognized in those cases is not applicable where "there is no plea agreement limiting the use of the prior conviction for enhancement purposes."[5]

Here, there was no plea agreement at all in the 1999 conviction, and we therefore conclude that the rule does not apply in this case. We reject appellant's argument that the State, by prosecuting the offense in 1999 as a first offense, entered into an "implied agreement" with appellant that that conviction would be used as a first offense for all purposes. In sum, we conclude that the district court did not err by denying appellant's motion to suppress the 1999 conviction.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Law Offices of Scott N. Freeman, P.C.
Washoe County Clerk

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[4]Speer v. State, 116 Nev. 677, 680, 5 P.3d 1063, 1065 (2000).

[5]Id.