

IN THE SUPREME COURT OF THE STATE OF NEVADA

WENDY ELAINE MCKEEHAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38145

FILED

OCT 11 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of third offense driving under the influence. The district court sentenced appellant to a prison term of 24 to 72 months and ordered appellant to pay a fine in the amount of \$5,000.00.

Appellant contends that the district court improperly used one of her prior convictions for enhancement. Specifically, appellant pleaded guilty to first offense driving under the influence in Ventura County, California. Appellant had been previously convicted of driving under the influence in Churchill County, Nevada. Appellant argues that the Ventura County conviction cannot be used to enhance the present offense because the plea agreement in Ventura County allowed her to plead guilty to first offense DUI.

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 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

¹108 Nev. 1058, 843 P.2d 368 (1992).


²106 Nev. 436, 794 P.2d 723 (1990).


³105 Nev. 293, 774 P.2d 1037 (1989).


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

In the instant case there is no evidence that the use of the Ventura County conviction was limited, pursuant to the plea agreement, for enhancement purposes. We therefore conclude that the district court did not err by using the conviction for enhancement. Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Robert E. Estes, District Judge
Attorney General
Churchill County District Attorney
Churchill County Public Defender
Churchill County Clerk

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

⁵Id.