IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES STEVEN SMEDLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38208

FILED

NOV 01 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 one count of driving under the influence (DUI), third offense. The district court sentenced appellant to a prison term of 12 to 30 months.

On January 25, 2001, appellant filed a motion to suppress his 1995 conviction from Lassen County, California, contending that it did not reference a same or similar offense to that proscribed in NRS 484.379 and 484.3795. The State opposed the motion. The district court denied appellant's motion to suppress, finding that the conviction at issue was the same or similar to NRS 484.379. After appellant's motion was denied, appellant pleaded guilty.

On June 7, 2001, the time scheduled for sentencing, appellant requested a continuance because he had a motion pending in California to invalidate one of his prior convictions. The district court denied the motion as untimely. The State then requested a one-day continuance in order to obtain a certified copy of one of appellant's prior convictions. The district court granted the State's motion and continued the sentencing hearing until June 21, 2001, the date appellant had originally requested.

01-18282

At the June 21 sentencing hearing, the State proffered two certified prior convictions.

Citing Robertson v. State,[1] appellant contends that the district court committed reversible error by admitting appellant's prior convictions at the June 21, 2001 sentencing hearing. We disagree.

Appellant's reliance on Robertson is misplaced. In Robertson, this court reversed the defendant's sentence because the district court sentenced him for a third offense felony DUI even though the State had not provided the district court with evidence of the defendant's prior convictions during the sentencing hearing.[2] After the defendant filed a notice of appeal, the district court conducted a second sentencing hearing, received evidence of the prior convictions, and reimposed a sentence for a third offense DUI.[3] This court concluded that the district court could not sentence the defendant for a third offense DUI without evidence of his prior convictions, and that the district court did not have jurisdiction to conduct the second hearing because the defendant had already filed a notice of appeal.[4]

In the instant matter, the district court granted a continuance so that the State could obtain a certified copy of one of appellant's prior convictions; it did not conduct two separate sentencing hearings or sentence appellant without the requisite evidence of prior convictions. Thus, Robertson is inapposite, and the district court did not err in

---

[1]109 Nev. 1086, 863 P.2d 1040 (1993), overruled in part by Krauss v. State, 116 Nev. 307, 998 P.2d 163 (2000), and by Ronning v. State, 116 Nev. 32, 992 P.2d 260 (2000).

[2]109 Nev. at 1087, 863 P.2d at 1041.

[3]Id.

[4]Id. at 1088-89, 863 P.2d at 1042.

admitting evidence of appellant's prior convictions at his sentencing hearing.

Appellant also contends that the district court erred in denying his motion to suppress his 1995 Lassen County, California conviction for driving under the influence because that conviction was not for conduct that is the same or similar to that prohibited by NRS 484.379. Particularly, appellant contends that his California conviction for DUI was for driving while under the influence of a prescription drug, which the State failed to demonstrate was a "chemical, poison, or organic solvent, or any combination of the same," as would be required for a conviction pursuant to NRS 484.379(2)(c). We conclude that appellant's contention lacks merit.

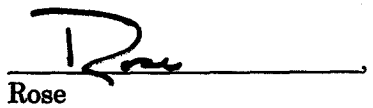
Appellant's 1995 Lassen County, California conviction arose from an information filed on May 24, 1995. The information alleged that appellant did "willfully and unlawfully, while under the influence of an alcoholic beverage and a drug and under their combined influence, drive a vehicle." The information further alleged that "defendant did willfully refuse a peace officer's request to submit to, and willfully failed to complete, the chemical test." Although on the advisement of rights forms, appellant crossed out the word "alcohol" and wrote in "prescription drugs," that does not alter the fact that appellant pleaded no contest to and was convicted of violating section 23152(a) of the California Vehicle Code, which prohibits driving under the influence of alcohol and a controlled substance. We conclude that the district court did not err in denying appellant's motion to suppress because a conviction under section 23152(a) of the California Vehicle Code is the same or similar to a conviction under NRS 484.379(2). Moreover, even assuming appellant had been convicted of driving under the influence of prescription medication, such conduct

would be sufficiently similar to conduct prohibited by Nevada's DUI statute.[5]

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Shearing, J.



Rose, J.

Becker, J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Lane, Fahrendorf, Viloria & Oliphant, LLP
Washoe County Clerk

---

[5]See NRS 484.379(2)(c) ("The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection."); Jones v. State, 105 Nev. 126-27, 771 P.2d 154, 155 (1989) (noting that the phrase "'same conduct' as used in NRS 484.3792(7) refers to the conduct of driving under the influence whether or not the particulars are identified") (emphasis added).