IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD LEE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39245

FILED

NOV 20 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one felony count of third-offense driving under the influence (DUI). The district court sentenced appellant Leonard Lee Johnson to serve a prison term of 12-36 months, and ordered him to pay a fine of $2,000.00.

Johnson contends the district court erred by using a prior DUI conviction in New Mexico in 1995 to enhance the instant offense to a felony. More specifically, Johnson argues that because the 1995 conviction was not introduced into evidence during the second conviction proceedings in Elko County in 1998, that the 1998 conviction should be considered a first offense. Johnson, in effect, contends that the State breached a duty of due diligence by not presenting evidence of the 1995 conviction during the proceedings in 1998, and therefore in the instant case, using the 1995 conviction as a first offense DUI, and the 1998 conviction as a second offense DUI, was improper. We disagree.

Initially, we note that Johnson cites to no authority in support of his contention. This court has stated that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues

not so presented need not be addressed by this court."[1] Moreover, Johnson acknowledges that prior to the instant offense, he had twice been convicted of DUI. Therefore, we conclude that Johnson's contention is without merit, and that his prior convictions were properly used to enhance his third DUI conviction to a felony.[2]

Johnson also raises two other issues that he concedes have not been preserved for review on appeal: (1) reasonable grounds for the testing of Johnson's blood[3] were not established; and (2) the jury verdict forms were not "clear," and did not define "under the influence." This court has stated that "[w]here a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal."[4] This court will, however, address assignments of error raised for the first time on appeal if the alleged error was plain and affected an appellant's substantial rights.[5] Johnson did not object below to the alleged errors, and we conclude that he has failed to demonstrate that his substantial rights were affected; therefore, we conclude that the issues now raised were not preserved for appeal.

---

[1]Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

[2]See Grover v. State, 109 Nev. 1019, 862 P.2d 421 (1993).

[3]NRS 484.382(1) provides in part: "Any person . . . shall be deemed to have given his consent to a preliminary test of his breath to determine the concentration of alcohol . . . when the test is administered at the direction of a police officer, . . . if the officer has reasonable grounds."

[4]McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998).

[5]Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000); see also NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

Having considered Johnson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Andrew J. Puccinelli, District Judge
Steve E. Evenson
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk