

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN GAIL FRENCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39374

FILED

JUL 17 2002

ORDER OF AFFIRMANCE

ANGIE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of third-offense driving under the influence of alcohol. The district court sentenced appellant to a prison term of 12 to 36 months, and ordered appellant to pay a fine in the amount of \$2,000.00.

Appellant contends that the district court erred by sentencing appellant for a felony. Specifically, appellant argues that the State failed to prove two prior convictions at sentencing, and that appellant should therefore be resentenced for a misdemeanor. We disagree.


At the preliminary hearing, the State offered three exhibits: a letter from the district attorney with attached affidavits showing appellant's blood alcohol level in the instant offense; and copies of two prior DUI convictions. Appellant was bound over, and subsequently pleaded guilty, reserving the right to challenge the constitutional validity of the prior offenses.

At sentencing, the district court clerk inadvertently marked and admitted the letter and affidavits as Exhibit 1, and one of the prior convictions as Exhibit 2. It is clear from the record, though, that the State intended for the two prior convictions to be admitted and not the letter

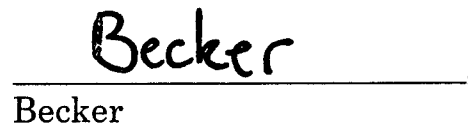
and affidavits. When the exhibits were admitted, counsel for appellant voiced no objection.

NRS 484.3792(2) requires that the prior offenses be proven. This court has held that the prior convictions may be proven prior to the sentencing hearing.¹ In this case, the prior convictions had been admitted in justice court, were contained in the district court's file at sentencing, and appellant did not challenge their constitutional validity. We therefore conclude that appellant's contention is without merit, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Robert E. Estes, District Judge
William B. Cole Jr.
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk

¹Ronning v. State, 116 Nev. 32, 992 P.2d 260 (2000).