

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMIAH JOHN CROWLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39691

FILED

OCT 15 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
CLERK OF SUPREME COURT  
CLERK OF SUPREME COURT

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 15 to 38 months. The district court further ordered appellant to pay a fine in the amount of \$2,000.00.

Appellant contends that the district court improperly used one of his prior convictions for enhancement. Specifically, appellant pleaded guilty to first-offense driving under the influence in Nye County, Nevada. Appellant had been previously convicted of driving while ability was impaired in Colorado. Appellant argues that the Nye County conviction cannot be used to enhance the present offense because he was allowed to plead guilty to first-offense DUI in Nye County.

In State v. Crist,<sup>1</sup> Perry v. State,<sup>2</sup> and State v. Smith,<sup>3</sup> 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

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<sup>1</sup>108 Nev. 1058, 843 P.2d 368 (1992).

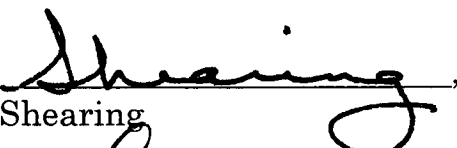
<sup>2</sup>106 Nev. 436, 794 P.2d 723 (1990).

<sup>3</sup>105 Nev. 293, 774 P.2d 1037 (1989).


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."<sup>4</sup> 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."<sup>5</sup>

In the instant case there is no evidence that the use of the Nye County conviction was limited for enhancement purposes pursuant to the waiver of rights form in which appellant pleaded guilty. 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 conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

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

<sup>5</sup>Id.

cc: Hon. J. Michael Memeo, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk