

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK BRIAN SHRECKENGAUST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40960

FILED

JUL 02 2003

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 count of felony driving while under the influence (DUI). The district court sentenced appellant to serve a prison term of 28 to 72 months.

Appellant's sole contention is that the district court erred in using a prior 1996 felony DUI conviction to enhance the instant DUI to a felony. Specifically, appellant argues that his 1996 felony DUI conviction was improperly enhanced to a felony because the State failed to present evidence in the 1996 proceeding that appellant then had two prior valid DUI convictions within 7 years.¹ Appellant's contention is without merit.

Regardless of whether appellant's 1996 DUI conviction was improperly enhanced to a felony, appellant was convicted of DUI in

¹See Krauss v. State, 116 Nev. 307, 998 P.2d 163 (2000) (recognizing that a felony DUI enhancement is invalid unless the State proffers evidence of two constitutionally valid prior DUI convictions or the defendant stipulates to their validity).

1996.² Where insufficient evidence supports the enhancement of a DUI conviction to a felony, the defendant is nonetheless convicted of misdemeanor DUI.³ Even if appellant had timely and successfully challenged the felony enhancement of his 1996 DUI conviction, he would still have had a valid prior misdemeanor DUI conviction in 1996 sufficient to support enhancement of the instant conviction to a felony. Here, however, appellant has not previously challenged the validity of the 1996 felony enhancement. Thus, his 1996 felony DUI conviction remains final and valid.

The transcript of the sentencing proceeding in the instant case reveals that the State proffered records of two of appellant's prior DUI convictions -- a 2001 DUI conviction obtained in California and the 1996 felony conviction discussed above. The district court admitted those records without objection. Under these circumstances, we conclude that the evidence of the prior convictions was sufficient to

²See generally Parsons v. State, 116 Nev. 928, 10 P.3d 836 (2000) (explaining that prior DUI convictions are not an element of the offense of felony DUI, but instead are only a basis for enhancement of the sentence upon conviction).


³See, e.g., Robertson v. State, 109 Nev. 1086, 863 P.2d 1040 (1993), overruled on other grounds by Krauss, 116 Nev. 307, 998 P.2d 163; Pettipas v. State, 106 Nev. 377, 794 P.2d 705 (1990), and Bonds v. State, 105 Nev. 827, 784 P.2d 1 (1989) (reversing and remanding for imposition of misdemeanor DUI conviction when evidence supporting felony was insufficient).

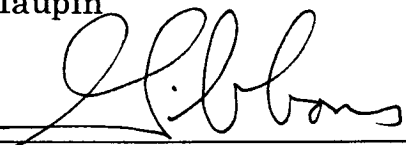
support the district court's enhancement of the instant DUI to a felony.⁴

Accordingly, having considered appellant's contention and concluded it lacks merit, we hereby

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴We need not address the arguments made by the parties involving the validity of the felony enhancement of the 1996 conviction.