

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL FRANCISCO VELASQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41524

FILED

NOV 05 2003

ORDER OF AFFIRMANCE


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


This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of third-offense domestic battery. The district court sentenced appellant to a prison term of 14 to 35 months. Appellant specifically reserved the right to appeal the district court's determination that a 1999 conviction for battery could be used for enhancement purposes, and appellant's sole contention on appeal is that the prior conviction should not have been used.

Appellant argues that the conviction cannot be used because he was convicted of simple battery in 1999, not of battery constituting domestic violence. We disagree. NRS 33.018(1) provides, in part, that a battery upon "a person with whom [the perpetrator] has a child in common" is an act constituting domestic violence. Appellant's conviction in 1999 was based on his battery of the victim in the instant case, who is also the mother of appellant's children. The statute does not require that a previous conviction state, on its face, that it is for domestic battery. It is uncontroverted that the 1999 conviction qualified as an act constituting domestic violence pursuant to NRS 33.018. We therefore conclude that the district court did not err by using the 1999 conviction for enhancement purposes.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk