

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRIL GARNER HEITZMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42210

FILED

JUL 12 2004

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 felony domestic battery. Second Judicial District, Washoe County; Steven R. Kosach, District Judge. The district court sentenced appellant Darril Garner Heitzman to serve a prison term of 12 to 30 months.

Heitzman contends that the district court erred in denying his motion to suppress his prior misdemeanor domestic battery convictions. Specifically, Heitzman contends that his two domestic battery convictions should not have been used to enhance the instant domestic battery conviction to a felony because he pleaded guilty to those offenses with the understanding that they would be treated as first offenses for all purposes. We conclude that Heitzman's contention lacks merit.

In State v. Crist,¹ Perry v. State,² and State v. Smith,³ we held that a second misdemeanor conviction could not be used to enhance a

¹108 Nev. 1058, 843 P.2d 368 (1992).

²106 Nev. 436, 794 P.2d 723 (1990).

subsequent misdemeanor conviction to a felony where the second conviction was obtained pursuant to a plea agreement expressly providing that the conviction would be treated as a first offense for enhancement purposes. The decisions in those cases, however, "were based solely on the necessity of upholding the integrity of plea bargains and the reasonable expectations of the parties."⁴ 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."⁵

In this case, although Heitzman's second domestic battery conviction was charged as a "first offense" and was purportedly negotiated in a package plea agreement with his first domestic battery conviction, Heitzman has failed to show that one of the terms of the plea agreement included that the conviction would be treated as a first offense for enhancement purposes. Accordingly, the district court did not err in denying Heitzman's motion to suppress.⁶

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³105 Nev. 293, 774 P.2d 1037 (1989).

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

⁵Id.

⁶We note that Heitzman did not file his affidavit concerning the terms of the plea agreement before the district court ruled on his suppression motion. To the extent that Heitzman argues that his trial counsel was ineffective in failing to present evidence of the terms of the plea agreement in a timely manner, that issue may be raised in a post-

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Having considered Heitzman's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Becker _____, J.
Becker

Agosti _____, J.
Agosti

Gibbons _____, 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

... continued

conviction proceeding initiated in the district court. See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).