

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES L. BATES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42547

FILED

AUG 27 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 third-offense driving under the influence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant James L. Bates to serve a prison term of 12-36 months and ordered him to pay a fine of \$2,000.00.

First, Bates contends that the district court violated his right to due process by not conducting a hearing to determine whether the prior misdemeanor DUI convictions offered by the State to enhance the instant DUI conviction to a felony were constitutionally infirm. Bates argues that if the district court had conducted a hearing, the court "would have realized that the prior convictions did not pass constitutional muster."

Bates failed to challenge the constitutional validity of any of the prior misdemeanor convictions submitted by the State in the proceedings below. Accordingly, Bates failed to properly preserve his right to raise this issue on appeal and the issue is waived.¹ Nevertheless, our review of the record reveals that the documents submitted by the State to

¹See McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998).

enhance Bates' instant conviction to a felony were not constitutionally infirm.²

Second, Bates contends that the district court violated his right to due process by not conducting a formal hearing prior to removing him from the serious offender diversion program. Bates compares his situation to that of an individual facing probation or parole revocation, and, without support, argues that he should be afforded the same due process rights. We conclude that Bates' contention is belied by the record.

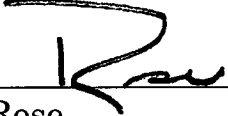
"[D]ue process is flexible and calls for such procedural protections as the particular situation demands."³ A basic requirement of due process involves "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"⁴ In the instant case, the district court conducted two hearings wherein the matter of Bates' compliance with the serious offender diversion program was addressed. At the conclusion of each hearing, Bates was given another opportunity to comply with the program and avoid incarceration. Eventually, due to Bates' failure to comply with the requirements of the program, a sentencing date was set. Accordingly, we conclude that Bates failed to demonstrate that his due process rights were violated, and therefore, his argument is without merit.

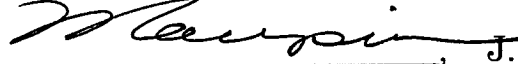
²See Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991); Koenig v. State, 99 Nev. 780, 788-89, 672 P.2d 37, 42-43 (1983).

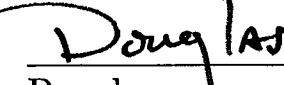
³Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

⁴Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

Having considered Bates' contentions and concluded that they are either not preserved for review on appeal or without merit, we ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk