

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN ALAN PRICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55034

FILED

JUL 19 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving while under the influence of intoxicating liquor (DUI). Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant Brian Alan Price claims that the district court erred by imposing an enhanced sentence pursuant to NRS 484.3792(2) (subsequently codified as NRS 484C.410(1)) because the State failed to prove that he had previously been convicted of a felony DUI in another jurisdiction. We conclude that this claim lacks merit. At sentencing, the State met its evidentiary burden by presenting the judgment, guilty plea agreement, and associated documents for Price's 2004 felony DUI conviction in Texas showing that the conviction was constitutionally valid. See Parsons v. State, 116 Nev. 928, 937 n.7, 10 P.3d 836, 841 n.7 (2000) (describing the standard governing use of a prior felony conviction for enhancement purposes). Price, however, failed to rebut the presumption of regularity by failing to present evidence proving by a preponderance that the Texas felony DUI conviction was constitutionally infirm. See id.

Accordingly, we conclude the district court did not err by enhancing Price's sentence pursuant to NRS 484.3792(2).

Price also claims that NRS 484C.410 is unconstitutional because it does not permit the issue of a defendant's alleged prior DUI convictions to be submitted to a jury and proved beyond a reasonable doubt. This claim lacks merit. See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime . . . must be submitted to a jury, and proved beyond a reasonable doubt." (emphasis added)); O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007) (recognizing Apprendi's holding in the context of prior convictions used to support adjudication of habitual criminality).

Having considered Price's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Jerome Polaha, District Judge
William B. Cole, Jr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk