

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES RAY THORP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74927-COA

FILED

JAN 25 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Ray Thorp appeals from a judgment of conviction, entered pursuant to a guilty plea, of driving under the influence of alcohol with one or more prior felony driving under the influence convictions. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Thorp claims the district court should have stricken the enhancement to his driving under the influence (DUI) conviction because his prior felony DUI convictions from Texas did not punish the same or similar conduct as Nevada's felony recidivism DUI statute does. Specifically, he claims Texas, at the time he was previously convicted, did not have a recidivism window statute like Nevada does, and therefore, the conduct punished in Texas was not the same or similar as that punished in Nevada.


The district court found Thorp's DUI could be enhanced to a felony because Texas and Nevada punish similar conduct, repeat offenses of driving while impaired. We conclude the district court did not err by so concluding. In a recent opinion, the Nevada Supreme Court found the critical inquiry regarding whether felony DUIs from other states can be used to enhance a Nevada DUI conviction to a felony is whether the statutes

“punish the same conduct, i.e., repeat DUI offenses.” *Sindelar v. State*, 132 Nev. 683, 686, 382 P.3d 904, 906 (2016). Further, the “length of the recidivism window . . . does not change the offending conduct.” *Id.*

At the time Thorp committed his prior felony DUIs in Texas in 1997 and 2001, Texas punished a person who had two or more prior DUI convictions with a felony conviction. *See* Texas Penal Code § 49.09(e) (2000); Texas Penal Code § 49.09(e) (1995); *Weaver v. State*, 87 S.W.3d 557, 561 (2002). The recidivist window in Texas was 10 years, and required one of his prior DUIs to have occurred during that 10-year period. *See* Texas Penal Code § 49.09(e) (2000); Texas Penal Code § 49.09(e) (1995); *Weaver*, 87 S.W.3d at 561. Therefore, Texas punishes the same or similar conduct as Nevada, *see* NRS 484C.110(1); NRS 484C.410(1)(d); *Sindelar*, 132 Nev. at 686, 382 P.3d at 906, and the district court did not err by declining to strike the enhancement. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Alvin R. Kacin, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk