IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEATHAN DAVID RENFROW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83432-COA

FILED

AUG 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

LEATHAN DAVID RENFROW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83433-COA

ORDER OF AFFIRMANCE

Leathan David Renfrow appeals from judgments of conviction entered pursuant to guilty pleas. In district court case nos. 20CR001941B (Docket No. 83432) and 20CR001221B (Docket No. 83433), Renfrow was convicted of two counts of driving under the influence of alcohol (DUI) with a prior felony DUI conviction (one count in each case). These cases were consolidated on appeal. NRAP 3(b). First Judicial District Court, Carson City; James E. Wilson, Judge.

Renfrow argues the district court erred when it denied his motions, one filed in each case, to set aside, exclude, or strike a 2020 judgment of conviction. Renfrow was previously convicted of misdemeanor DUIs in 2008 and 2011. He committed another DUI in 2015, but he was not convicted of that offense until 2020 after he had completed a diversion program (2020 conviction). Because it was his third DUI within the

previous seven years, the 2020 conviction was enhanced to a felony. *See* NRS 484C.400(1)(c).

Renfrow's argues the 2020 conviction should not have been used to enhance his instant convictions to felonies. He claims that the 2011 conviction was pleaded down to a "first" DUI such that it should have been treated as a first offense for all purposes and, thus, could not have been used to enhance the 2020 conviction to a felony. For this reason, Renfrow argues that his 2020 conviction is constitutionally infirm and was thus improperly used to enhance his instant convictions to felonies.

A judgment of conviction is entitled to a presumption of regularity, and the defendant has the burden of rebutting the presumption by a preponderance of the evidence. *Dressler v. State*, 107 Nev. 686, 693, 819 P.2d 1288, 1292-93 (1991). A defendant may reasonably expect DUIs treated as first offenses to receive first-offense treatment for all purposes unless he "receives appropriate clarification and warning . . . or explicitly agrees that the State may count the conviction as a second offense for future enhancement purposes." *State v. Second Judicial Dist. Court (Kephart)*, 134 Nev. 384, 391, 421 P.3d 803, 808 (2018) (internal quotation marks omitted). A defendant may "stipulate to or waive proof of the prior convictions at sentencing." *Krauss v. State*, 116 Nev. 307, 311, 998 P.2d 163, 165 (2000).

As part of the proceedings leading to his 2011 conviction, Renfrow signed a waiver-of-rights form that stipulated the conviction "may be used for enhancement purposes." Renfrow claims the stipulation was ambiguous because it could mean either that the 2011 conviction might be used to enhance the next DUI to a "second" offense or that the 2011 conviction might be used to enhance the next DUI to a third offense. He

further argues that, because the waiver is ambiguous, it should be construed in Renfrow's favor.

Renfrow has not demonstrated the stipulation was subject to two reasonable interpretations such that it was ambiguous. If the stipulation meant merely that the 2011 conviction could be used to enhance the next DUI within seven years to a "second" offense, the stipulation would have been meaningless. As a matter of law, the 2011 conviction, as a "first" offense, could be used to enhance a subsequent DUI committed within seven years to a "second" DUI. *See* NRS 484C.400(1)(b); *Speer v. State*, 116 Nev. 677, 679-80, 5 P.3d 1063, 1064 (2000) (holding that any prior offenses "may be used to enhance a subsequent DUI so long as they occurred within 7 years of the principal offense and are evidenced by a conviction"). The only reasonable meaning of the stipulation is that the 2011 conviction could be used to enhance a subsequent DUI committed within seven years to a third DUI even though the court was treating the 2011 DUI as a "first" offense for sentencing purposes. And Renfrow has not alleged that he understood the stipulation to mean anything other than that the 2011 conviction could be used to enhance a third DUI conviction in seven years to a felony.

As a separate and independent ground to deny relief, Renfrow is judicially estopped from asserting that his 2011 conviction was improperly used to enhance his 2020 conviction to a felony. This position is contrary to the position taken by Renfrow in the proceeding leading to his 2020 conviction, as Renfrow's guilty plea agreement in those proceedings was based on the 2011 conviction being his second DUI conviction within seven years. Thus, he cannot now argue that the 2011 conviction was not a second offense for enhancement purposes. *See Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007) (providing that judicial

estoppel applies if, among other things, the same party takes two different positions in judicial proceedings).

Finally, although Renfrow claims his 2020 conviction was constitutionally infirm, he does not claim it was facially unconstitutional or otherwise indicate how it was unconstitutional. For the foregoing reasons, Renfrow failed to rebut by a preponderance of the evidence the presumption of regularity afforded the 2020 conviction. We therefore conclude the district court properly relied on Renfrow's 2020 conviction to enhance his convictions in the instant cases to felony convictions. Accordingly, we

ORDER the judgments of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk