

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD EUGENE HADLEY,

Defendant-Appellant.

UNPUBLISHED

March 10, 2009

No. 283280

Macomb Circuit Court

LC No. 07-000997-FH

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based conviction of operating a vehicle under the influence of intoxicating liquor (OUIL), third offense, MCL 257.625. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On March 19, 2007, defendant pleaded guilty to OUIL, third offense, in exchange for dismissal of other charges.¹ Defendant acknowledged that he had been convicted of OUIL in 1985 and of unlawful blood alcohol level in 1982. The trial court sentenced defendant to one to five years in prison, and revoked defendant's driver's license.

We review issues of statutory construction and interpretations of constitutional provisions de novo. *People v Callon*, 256 Mich App 312, 315; 662 NW2d 501 (2003).

Under MCL 257.625(9)(c) as it read prior to January 3, 2007, a defendant was guilty of felony drunk driving if he had been convicted of two or more drunken-driving related offenses within the previous ten years. 2006 PA 564, effective January 3, 2007,² amended MCL 257.625(9)(c) to remove the ten-year time frame. Now, the statute provides that a person who has been convicted of two or more drunken-driving related offenses may be convicted of a felony upon committing a third offense, regardless of when the previous convictions occurred.

¹ The incident that lead to the charge occurred on February 17, 2007.

² This public act is also known as "Heidi's Law."

Defendant emphasizes that his prior convictions occurred more than ten years before the enactment of 2006 PA 564, and contends that as a result, his conviction of OUIL, third offense, violates the ex post facto clauses of the United States and Michigan Constitutions, US Const, art I, § 10, cl 1; Const 1963, art 1, § 10, because it increases the punishment imposed for acts that occurred in the past. We disagree.

In *People v Perkins and People v Lesage*, 280 Mich App 244; ___ NW2d ___ (2008), this Court considered and rejected the same argument put forth by defendant. The *Perkins* Court observed that an ex post facto law attaches legal consequences to acts that occurred before the law became effective, and thus prejudices a criminal defendant. *Id.* at 251. However, the *Perkins* Court reasoned that 2006 PA 564 does not attach legal consequences to acts that occurred prior to the date of its enactment, but rather permits enhancement of drunken-driving related offenses that occur after the date of its enactment. The *Perkins* Court held that 2006 PA 564 does not violate the constitutional provisions against ex post facto laws. *Id.* at 251-252.

Perkins constitutes binding precedent that we must follow. MCR 7.215(C)(1). Consequently, defendant is not entitled to relief.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering