

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050089-CA
v.	)	
	)	F I L E D
Mario A. Soto,	)	(March 23, 2006)
	)	
Defendant and Appellant.	)	2006 UT App 122

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Seventh District, Castle Dale Department, 011700054  
The Honorable Bruce K. Halliday

Attorneys: Margret Sidwell Taylor, Helper, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

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Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Mario A. Soto appeals the trial court's order denying his motion to dismiss the charge of driving under the influence with prior convictions, a third degree felony, in violation of Utah Code section 41-6-44. See Utah Code Ann. § 41-6-44(2), (6) (Supp. 2001).<sup>1</sup> We affirm.

In July 2001, Soto was charged with driving under the influence (DUI) with prior convictions, pursuant to Utah Code section 41-6-44. See id. The charge was based on the current offense and Soto's prior misdemeanor DUI convictions, which were entered in various justice courts in October 1991, March 1993, and March 1996.

Soto moved to dismiss the charge, arguing in essence that:  
(1) section 41-6-44(6) is vague and does not permit enhancements

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1. The relevant section of the Utah Code was amended and renumbered as Utah Code sections 41-6a-502 and -503, effective February 2, 2005. See Utah Code Ann. §§ 41-6a-502 to -503 (2005). In this decision, we cite to the prior enactment of these sections.

based on convictions entered prior to July 1, 2001, and (2) Soto's prior justice court convictions are insufficient to support the felony charge because justice courts are not courts of record. The trial court denied this motion and Soto appeals. We review a trial court's decision to grant or deny a motion to dismiss for correctness. See State v. Hamilton, 2003 UT 22, ¶17, 70 P.3d 111.

Soto raises the same arguments on appeal that we recently addressed in State v. Gonzales, 2005 UT App 538, 127 P.3d 1252. In Gonzales, this court specifically held that section 41-6-44(6)(a), by its clear terms, permits enhancement based on a DUI committed prior to July 1, 2001:

[S]ubpart (ii) of [section 41-6-44(6)(a)] clearly limits enhancement based on a conviction for automobile homicide and other felonies committed prior to July 1, 2001. However, Defendant's convictions were misdemeanors, and under the plain language of subpart (i), they may support an enhancement as long as they occurred within ten years of Defendant's third conviction.

Id. at ¶9. There is no dispute that Soto's prior convictions occurred within ten years of his most recent conviction.

Further, based upon established caselaw, Gonzales rejected the argument that convictions in justice courts could not be utilized for enhancement purposes:

[W]e have recently reiterated that prior convictions are vested with a presumption of regularity even when a complete record of the proceedings was not created or was unavailable. See State v. Ferguson, 2005 UT App 144, ¶¶24-27, 111 P.3d 820. We have expressly applied this presumption to proceedings in justice court, while recognizing that they are courts not of record. See State v. Gutierrez, 2003 UT App 95, ¶12, 68 P.3d 1035 (applying presumption of regularity to uphold prior DUI conviction based on a guilty plea in justice court). Given that we treat convictions entered in justice court with the same presumption of regularity as other convictions, we decline to conclude that convictions entered by such

courts are, by their nature, invalid for  
enhancement purposes.

Id. at ¶11.

Accordingly, we affirm.

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James Z. Davis, Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge