IN THE COURT OF APPEALS
OF THE STATE OF NEVADA

CHRISTOPHER RYAN MARTIN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 82498-COA

ORDER OF AFFIRMANCE

(Filed Sep. 13, 2021)

Christopher Ryan Martin appeals from a judgment of conviction entered pursuant to a guilty plea of felony driving under the influence (DUI). Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Martin argues his guilty plea was invalid because he did not understand the elements of the offense and that a felony conviction would cause him to lose the right to bear arms. Generally, this court will not consider a challenge to the validity of a guilty plea on direct appeal from a judgment of conviction. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance." *Id.*; *see also Smith*, 110 Nev. at 1010-11 n.1, 879 P.2d at 61 n.1 (stating that unless error clearly appears from the record, a challenge to the validity of a guilty plea must first be raised in the district court in a motion to withdraw

guilty plea or a postconviction petition for a writ of habeas corpus). Martin does not claim that he previously raised a challenge to the validity of his plea in the district court, and the alleged errors do not clearly appear in the record. Therefore, we decline to consider Martin's claims.

Second, Martin argues NRS 484C.400(1)(c) is unconstitutional because it permits the State to enhance a DUI charge to a felony offense based upon prior misdemeanor DUI convictions that were not the result of a jury trial. We review the constitutionality of statutes de novo. *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). "Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional." *Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 796, 358 P.3d 234, 237-38 (2015) (internal quotation marks omitted). "In order to meet that burden, the challenger must make a clear showing of invalidity." *Id.* at 796, 358 P.3d at 238 (internal quotation marks omitted).

NRS 484C.400(1)(c) permits a current DUI to be charged as a felony offense based upon a defendant's prior misdemeanor DUI convictions. In this matter, Martin was charged pursuant to NRS 484C.400(1)(c) with felony DUI based upon his prior misdemeanor DUI convictions, and he pleaded guilty to committing felony DUI. Martin contends that only prior convictions obtained through a jury trial can be used to enhance a sentence. In support, Martin relies upon *Apprendi v. New Jersey*, 530 U.S. 466, 496 (2000), and *Jones v. United States*, 526 U.S. 227, 249 (1999). These

cases are unequivocal: "*Other than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490 (emphasis added); *accord Jones* 526 U.S. at 243 n.6. Martin points to excerpts from these cases stating that prior convictions are established by jury trial. *See Apprendi,* 530 U.S. at 490; *Jones*, 526 U.S. at 249. The portions of the cases from which the excerpts were taken merely explained one reason why recidivism is treated differently from all other considerations that could enlarge a sentence. *See Apprendi*, 530 U.S. at 496 (explaining primarily that recidivism "does not relate to the commission of the offense itself" (internal quotation marks omitted)); *Jones*, 526 U.S. at 249 (describing due process protections that include the right to a jury trial as "one basis" to justify the distinction). Martin thus has not demonstrated that only prior convictions that were subject to a jury trial may be considered when enhancing a sentence due to recidivism and, in turn, that NRS 484C.400(1)(c) is facially unconstitutional.[1] Therefore, we conclude Martin is not entitled to relief on this claim and we

[1] Martin also refers several times to *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he does not offer any citations to the case that support what he claims the case stands for. Rather, like the petitioner in *Almendarez-Torres*, Martin admitted his recidivism at the time he pleaded guilty. For these reasons, Martin fails to demonstrate that *Almendarez-Torres* supports his claim.

ORDER the judgment of conviction AFFIRMED.

/s/ Gibbons, C.J.
Gibbons

/s/ Tao, J.
Tao

/s/ Bulla, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Law Offices of John G. Watkins
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE COURT OF APPEALS
OF THE STATE OF NEVADA

CHRISTOPHER RYAN MARTIN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 82498-COA

ORDER DENYING REHEARING

(Filed Oct. 20, 2021)

Rehearing denied. NRAP 40(c).

It is so ORDERED.

/s/ Gibbons, C.J.
Gibbons

/s/ Tao, J.
Tao

/s/ Bulla, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Law Offices of John G. Watkins
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT
OF THE STATE OF NEVADA

CHRISTOPHER RYAN MARTIN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 82498

ORDER DENYING PETITION FOR REVIEW

(Filed Jan. 27, 2022)

Review denied. NRAP 40B.

It is so ORDERED.

/s/ Parraguirre, C.J.
Parraguirre

/s/ Hardesty, J.
Hardesty

/s/ Stiglich, J.
Stiglich

/s/ Cadish, J.
Cadish

/s/ Silver, J.
Silver

/s/ Pickering, J.
Pickering

/s/ Herndon, J.
Herndon

cc: Hon. Ronald J. Israel, District Judge
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk