

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DARRIN M. DENBOW,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD70474

Date: February 9, 2010

Appeal from:
Boone County Circuit Court
The Honorable Clifford E. Hamilton, Jr., Judge

Appellate Judges:
Division One: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

Attorneys:
Andrew D. Popplewell, Esq., Columbia, MO, for appellant.
Karen L. Kramer, Esq., Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

DARRIN M. DENBOW

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v.

STATE OF MISSOURI,

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WD70474

BOONE COUNTY

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

On June 25, 2007, Darrin M. Denbow pled guilty in Boone County Circuit Court to one count of driving while intoxicated under § 577.010. On July 9, 2007, he was sentenced as a persistent offender pursuant to § 577.023 to three years in the Department of Corrections. After Denbow's probation was revoked and the sentence executed, he filed a motion for post-conviction relief under Rule 24.035, which the circuit court denied. Denbow appeals and argues that he was erroneously sentenced as a persistent offender based (in part) on a prior state-court conviction for driving with excessive blood alcohol content.

AFFIRMED.

Division One holds:

To be convicted as a persistent offender pursuant to § 577.023.1(4)(a), the State must prove that an individual “has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses.” Section 577.023.1(3), in turn, defines an “intoxication-related traffic offense” to include both “driving while intoxicated” and “driving with excessive blood alcohol content.”

Denbow does not dispute that he had previously been convicted, in state court, of driving while intoxicated in 2000, and of driving with excessive blood alcohol content in 2002. Section 577.023.1(3) expressly denominates both of those offenses as “intoxication-related traffic offenses.” Denbow nevertheless argues that he does not qualify as a persistent offender, because he claims that under § 577.023.16 (as it existed prior to 2008) only prior convictions “for driving while intoxicated” – and *not* convictions for driving with excessive blood alcohol content – may be used to enhance punishment under § 577.023. We disagree.

Denbow's argument would require us to apply to an offender's prior state-court convictions a limitation which § 577.023.16 imposed on the prior county- or municipal-court convictions which can support sentence enhancement. Nothing in the statute's text requires this result, and the canon of statutory construction known as the "last antecedent rule" demonstrates that the limitation on which Denbow relies applies *only* to prior county- and municipal-court convictions. *Turner v. State*, 245 S.W.3d 826 (Mo. banc 2008), on which Denbow heavily relies, supports our conclusion, since it treats § 577.023.16's description of qualifying prior state-court convictions as independent of the statute's description of qualifying county- or municipal-court convictions.

Opinion by: Alok Ahuja, Judge

February 9, 2010

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