



MODIFIED OPINION: 12-23-08

In the Missouri Court of Appeals
WESTERN DISTRICT

STATE OF MISSOURI,)	
RESPONDENT,)	
v.)	WD68570
)	OPINION FILED:
MICHAEL G. CRAIG,)	OCTOBER 28, 2008
APPELLANT.)	

**APPEAL FROM THE CIRCUIT COURT OF CLAY COUNTY
THE HONORABLE MICHAEL J MALONEY, JUDGE**

Before DIV III: ELLIS, P.J., HARDWICK, and DANDURAND, JJ.

Michael Craig pled guilty to driving while intoxicated and was sentenced as an aggravated offender to three years imprisonment. On appeal, he challenges the factual basis for the allegations of his prior convictions in the charging information. Because we lack appellate jurisdiction to consider his claim following a guilty plea, the appeal is dismissed.

FACTUAL AND PROCEDURAL HISTORY

On September 22, 2006, the State filed an information charging Craig with the class C felony of driving while intoxicated in violation of Section 577.010, RSMo 2000. The information further alleged that Craig had previously pleaded or been found guilty of driving while intoxicated in 1992 and on two occasions in 1999. Based on these prior convictions, the State sought to prove that Craig was

eligible for enhanced penalties as an “aggravated offender.” Section 577.023.1, RSMo Cum. Supp. 2005.

On February 15, 2007, Craig filed a “Motion to Dismiss Felony Information and To Strike Enhancement Allegations and Suggestions in Support.” His motion asserted that the alleged guilty pleas in 1999 were invalid for enhancement purposes because they did not comply with the procedural requirements of Rule 24.02 and former Rule 37.59. Craig also alleged that the record of the 1992 conviction failed to show a “plea of guilty or a finding of guilty.”

On February 16, 2007, in a “hybrid proceeding,” Craig pled guilty to driving while intoxicated but did not admit that the three prior offenses listed in the charging information were sufficient to prove that he was an aggravated offender. After hearing evidence on the three prior offenses, the court denied Craig’s motion to dismiss the felony information. The court found that Craig was an aggravated offender and sentenced him to as a class C felony offender for driving while intoxicated.

ANALYSIS

Craig raises two points on appeal. First, he contends the circuit court erred in overruling his motion to dismiss the felony information because the enhancement allegations were based on invalid guilty pleas that were not knowingly, voluntarily, and intelligently made, as required under Rules 24.02 and 37.59. In Point II, Craig further contends the enhancement allegations were improperly based on his 1992

conviction, for which he asserts there is no record of a guilty plea or finding of guilt.

This case involves a direct appeal from a judgment entered on a guilty plea. While neither party raises the issue, we must determine *sua sponte* our jurisdiction to consider the merits of the claim on appeal. ***Hampton v. Carter Enters, Inc.*, 238 S.W.3d 170, 173 (Mo.App. 2007)**. The only issues cognizable on direct appeal from a guilty plea are the subject matter jurisdiction of the trial court and the sufficiency of the charging instrument. ***State v. Sharp*, 39 S.W.3d 70, 72 (Mo.App. 2001)**. Any appellate claim that does not fall into one of these two categories is unreviewable. ***State v. Sparks*, 916 S.W.2d 234, 238 (Mo.App. 1995)**.

Here, Craig does not allege that the circuit court lacked subject matter jurisdiction. He also has not challenged the sufficiency of the information to notify him of the charged offense. While his first point on appeal argues the circuit court erred in refusing to dismiss the information, the challenge is grounded in the evidence the information was based on, rather than the sufficiency of the charging document itself. Craig's second point also asserts error based on the lack of evidence to support the information and fails to directly challenge the sufficiency of the document to notify him of the DWI charge or the prior convictions.

In this appeal, Craig essentially asserts there was no factual basis for the enhancement because there was no evidence to support the allegations of prior convictions in the information. After a guilty plea, "[a] complaint about the

evidentiary basis for the trial court's finding is not subject to review by direct appeal. It is subject to review only by means of post-conviction motion." ***State v. Phillips*, 204 S.W.3d 729, 732 (Mo.App. 2006)** (internal citations omitted). Craig's exclusive remedy was to file a Rule 24.035 motion to challenge the felony conviction following his guilty plea. ***Sharp*, 39 S.W.3d at 72.**

In his motion for rehearing, Craig asserts he has the right to appeal from his guilty plea under Section 577.023, which sets forth procedures for determining persistent and prior offender status. Section 577.023.7 states: "In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing." This provision does not purport to allow an appeal from a guilty plea; it merely allows the court to accept evidence of prior offenses after the plea and before sentencing. Craig did not acquire a special right of appeal based solely on the fact that the court heard evidence of his prior offender status after he pled guilty to the charged offense.

Craig also argues that Rule 24.035 is not an appropriate remedy in that he "did not plead guilty to a felony." Craig points out that he pled guilty to driving while intoxicated, which is a misdemeanor violation of Section 577.010 and did not rise to the level of a felony until the State proved his aggravated offender status under Section 577.023.4. We note, however, that Rule 24.035 provides a post-conviction remedy for persons "convicted of a felony on a plea of guilty." To be entitled to relief under this rule, Craig was not required to plead guilty to a felony, but the record must demonstrate that a felony conviction was entered on

his plea of guilty. Here, the record reflects that Craig was aware he was pleading guilty to an offense that would either be a felony or misdemeanor, depending on additional evidence of his prior convictions. A felony conviction was entered on his guilty plea and, thus, Craig should be entitled to seek post-conviction relief under Rule 24.035.

CONCLUSION

Because the circuit court's refusal to dismiss the information does not fall into a category for which direct review of a guilty plea is available, we lack appellate jurisdiction to consider Craig's claims. ***State v. Sharp*, 39 S.W.3d 70, 72 (Mo.App. 2001)**. Accordingly, the appeal is dismissed.

LISA WHITE HARDWICK, Judge

All concur.