

DUI's and State v. Shaffer

By: Brett A. Purtzer; Jan 2003

State v. Shaffer, 113 Wn.App. 812, 55 P.3d 668 (2002), held RCW 46.61.505(11)(a)(v) unconstitutional as it violated due process.

In Shaffer, the issue was whether a prior charge, as opposed to a conviction of DUI, would trigger the sentence enhancement for a vehicular homicide conviction when committed under the influence of alcohol or drugs. Shaffer entered a guilty plea to vehicular homicide, but he previously had a prior DUI charge that resulted in a conviction of reckless driving. Division I of the Court of Appeals held that the prior offense statute, RCW 46.61.505(11)(a)(v), was unconstitutional as it allowed a prior charge, but not conviction of DUI, to result in a two-year enhancement. See RCW 9.94A.510(7).

The significance of Shaffer cannot be understated. Significantly, the prior offense category may also apply to DUI charges when you are considering whether a current DUI charge is a first or subsequent offense for scoring mandatory minimums.

Additionally, before Shaffer most prosecutors were treating a subsequent DUI charge as a second or additional offense even if the prior deferred prosecution was successfully completed. Now, some county prosecutors are not counting successfully completed deferred prosecutions as prior offenses, based upon Shaffer, because a DUI charge that results in a deferred prosecution, or any lesser offense, is no longer a DUI conviction and may not be considered a prior offense for DUI scoring purposes.

As such, Shaffer applies not only to vehicular homicide offenses committed while under the influence of alcohol, but also should apply to other offenses that are used as enhancements when the enhancement imposed is a result of a charged offense as opposed to a conviction.

As many individuals are affected by this change in the law, you should review both DUI and vehicular homicide/assault cases where an enhancement has been imposed because of the substantial prison and/or jail time that is associated with the enhancements.

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