

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Double Jeopardy Issue Addressed in New Mexico Habitual Sentencing Case

The New Mexico Habitual Offender statute is a tool available to the prosecution and the courts to enhance the sentence of a felony defendant who has a prior felony conviction within ten years of the date of the newly alleged crime. If the defendant is deemed a Habitual Offender, the statute increases the defendant's prison exposure significantly.

A habitual offender finding has very serious penal consequences. The first felony increases the sentence by one year, the second felony by four years and the third or subsequent felonies by eight years. The New Mexico Court of Appeals addressed the issue of double jeopardy in habitual offender sentencing in *State v. May*. Specifically, the Court addressed the use of a gun offense as both a separate crime as well as an enhancement to the underlying drug trafficking charges.

In 2007 Defendant James May pled guilty to "felon in possession of a firearm," a fourth degree felony along with several other misdemeanors. Maximum exposure for a fourth degree felony is 18 months and an additional 364 days for each misdemeanor. After the guilty plea was entered, the Prosecutor filed a supplemental criminal information alleging that James May was a habitual offender. The State sought to enhance the base felony sentence by four years.

The defendant May had 3 prior felonies. The state used as predicates one prior 2005 State felony conviction and one prior 1991 Federal conviction. Interestingly, the Court disregarded the State felony from 2005 summarily stating that it was not concerned with that case.

Instead, the Court focused on May's 1991 convictions. In 1991, May was convicted under federal law for Possession with Intent to Distribute Methamphetamine. Arising out of the same incident, the defendant was convicted of Carrying a Firearm during a Drug Trafficking Crime under 18 U.S.C. Section 924(c)(1). Rather than take what would seem to be the easier route for legitimating the 4 year enhancement with the one Federal conviction and the 2005 State conviction, the Court instead chose instead to use the two 1991 convictions.

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It is well accepted that the State cannot use the same prior felony conviction twice during sentencing. However, the court determined that double jeopardy does not prohibit the use of two convictions for enhancement under two separate statutes as long as the predicate crimes are separate incidents of criminal conduct. It does not matter that both arose from the same judgment and sentence and the same underlying crime.

The defendant argued that the 924(c)(1) firearm crime was an enhancement of the original possession conviction and could not also be used to enhance the later State sentence. The Court disagreed finding that the federal firearm offense was clearly under federal law a separate and distinct conviction from the possession crime despite the fact that the two charges arose out the same incident. As such, the Court found that the 1991 convictions could serve as the basis for the 4 year enhancement.

Unfortunately for the defendant, the Court did not buy his double jeopardy arguments regarding duplicate use of the same offense for enhancement purposes. On the other hand, by the court's reasoning, the defendant might have dodged the 8 year enhancement by virtue of the Court ignoring the 2005 State court conviction.

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