



## Administrative Office of the Courts

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Supreme Court rules that third-offense misdemeanor domestic violence convictions subject to enhanced sentencing

SANTA FE – A sentencing enhancement for habitual offenders applies to a third conviction of misdemeanor domestic violence, the state Supreme Court ruled today.

In a unanimous decision, the Court affirmed the sentence of an Alamogordo man, James Barela, who pleaded no contest in 2015 to battery against a household member. Because it was his third misdemeanor domestic violence conviction, a state law elevated the offense to a fourth-degree felony — making it punishable by 18 months in prison rather than up to 364 days in jail for a misdemeanor.

Barela received a sentence of 18 months in prison for his domestic violence conviction plus an additional year under the Habitual Offender Act, which enhances the sentence of someone convicted of a noncapital felony who has a prior felony conviction. Barela had a felony conviction in 2010 for false imprisonment. The habitual offender law adds a year to the sentence of felony defendants with one prior felony conviction, two years for those with two prior felonies and three years for someone with three or more prior felonies.

In his appeal, Barela contended that the Habitual Offender Act does not apply to a third-offense domestic violence conviction because it is considered a felony only on account of the multiple convictions.

The Court rejected Barela's arguments and concluded that the "plain language of the statutes does not prohibit Defendant's sentence enhancement."

The justices stated that "the Habitual Offender Act, in its definition of 'prior felony conviction,' explicitly excludes felony DWI but does not exclude felony battery against a household member."

"Within the Habitual Offender Act is a clear statement that it 'shall' apply to defendants convicted of a felony who have a prior felony conviction, except when the prior felony

conviction is a felony DWI,” the Court wrote in an opinion by Justice C. Shannon Bacon. “Presuming the Legislature is aware of existing law, it ostensibly would have likewise excluded felony battery against a household member from the Habitual Offender Act if it did not intend for these statutes to apply simultaneously.”

The Court also distinguished its reasoning about a sentencing enhancement for third-conviction domestic violence misdemeanors from a 1997 decision in which justices concluded that the Habitual Offender Act does not apply to “self-enhancing” felony DWI convictions. Unlike domestic violence, the Court reasoned, felony DWI is subject to separate sentencing provisions that increase the penalties and degree of felony for each successive conviction. The Court also stated that “unlike felony DWI, felony battery against a household member is a violent crime.”

“In fact, battery against a household member enhances to a felony only when a defendant has repeatedly inflicted violence on the same definitional subset of individuals,” the Court wrote. “Presumably, the Legislature classified this behavior as a fourth-degree felony to ensure defendants could be punished more severely for continuing to batter those within their households.”

The Court’s decision affirmed a ruling by the state Court of Appeals but the justices differed with part of its legal reasoning.

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To read the decision in *State v. Barela*, No. S-1-SC-37301, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/488521/index.do>