

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN MATTHEW KUCHARAK,

Defendant-Appellant.

UNPUBLISHED

June 18, 2009

No. 284901

Clinton Circuit Court

LC No. 07-008199-FH

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction of operating a vehicle under the influence of intoxicating liquor (OUIL), third offense, MCL 257.625(9)(c). Defendant had previously been convicted of operating a vehicle while intoxicated in 1995 and 1999. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant claims that MCL 257.625(9)(c), as amended by 2006 PA 564, effective January 3, 2007, violates the Ex Post Facto clause of the United States Constitution and the Michigan Constitution, US Const, art I, § 10; Const 1963, art 1, § 10, as well as the Due Process clause of each constitution, US Const, Am XIV, § 1; Const 1963, art 1, § 17. This Court has held that MCL 257.625(9)(c), as amended, does not violate due process or the prohibition against ex post facto laws. *People v Sadows*, 283 Mich App 65, 67-70; ___ NW2d ___ (2009); *People v Perkins*, 280 Mich App 244, 251-252; 760 NW2d 669 (2008), aff'd 482 Mich 1118 (2008). We are bound by those decisions. MCR 7.215(C)(2). In addition, counsel was not ineffective for failing to object to the use of defendant's prior convictions to enhance the OUIL charge to a felony. Because MCL 257.625(9)(c) is not an ex post facto law and does not violate due process, any objection to the use of defendant's prior convictions would have been futile. Counsel is not required to make a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jane E. Markey