

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD ALLEN WOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43824

FILED

FEB 17 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving while under the influence (DUI). Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Howard Allen Wood to serve a prison term of 12 to 30 months.

Wood contends that the district court erred in using a prior misdemeanor DUI conviction to enhance the instant DUI conviction to a felony because it was constitutionally infirm. Specifically, citing to U.S. v. Akins,¹ Wood argues that his 1996 misdemeanor DUI conviction is invalid because the Sparks Municipal Court accepted his guilty plea without advising him about the dangers and disadvantages of self-representation. We conclude that Wood's contention lacks merit.

Preliminarily, we note that Akins is not persuasive and is factually inapposite because that case involved a federal crime, possession of a firearm after being convicted of domestic violence, where the prior

¹243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing 276 F.3d 1141 (2002).

conviction was an element of the crime.² The Akins court held that, because the prior conviction was an element of the crime, the State had to prove beyond a reasonable doubt that the defendant made a knowing and intelligent waiver of counsel including that he was advised of the dangers and disadvantages of self-representation.³ Unlike in Akins, the prior misdemeanor DUI conviction at issue here is not an element of the charged crime, but instead was used to enhance the DUI conviction to a felony.

Recently, the United States Supreme Court held that, in most circumstances, a defendant pleading guilty to a misdemeanor DUI may validly waive counsel without being canvassed on the dangers of self-representation.⁴ This court has likewise stated that, with respect to an advisement on the waiver of the right to counsel, “[t]he same stringent standard does not apply to guilty pleas in misdemeanor cases” as applies in felony cases.⁵ In order to establish the validity of a prior misdemeanor conviction, the State must “affirmatively show either that counsel was present or that the right of counsel was validly waived, and the spirit of constitutional principles was respected.”⁶ For example, in Koenig v. State, this court affirmed the use of a prior misdemeanor conviction to enhance a

²Id. at 1202; see also Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 748 P.2d 494 (1987) (noting that this court is not bound by decisions issued by the federal circuit court of appeals), aff’d Blanton v. City of North Las Vegas, 489 U.S. 538 (1989).

³Id. at 1202-03.

⁴See Iowa v. Tovar, 541 U.S. 77 (2004).

⁵Koenig v. State, 99 Nev. 780, 788-89, 672 P.2d 37, 42-43 (1983).

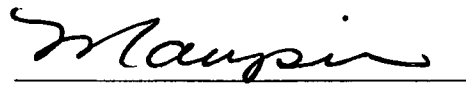
⁶Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

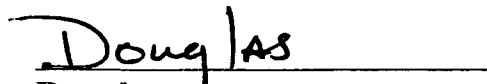
sentence imposed in a DUI case where the record of the prior conviction showed only that the appellant signed a form stating that he freely and intelligently waived his right to counsel.⁷

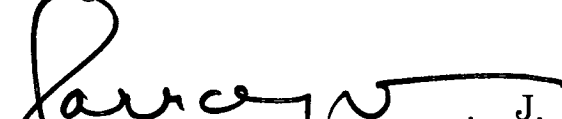
In this case, we conclude that the State met its burden and demonstrated that the spirit of constitutional principles was respected. The record of the 1996 conviction included a signed waiver of rights form wherein Wood acknowledged that he understood that in pleading guilty he was waiving several constitutional rights, including the right to counsel. The record of the 1996 conviction also contained an acknowledgment, initialed by the municipal court judge, that Wood was advised of his right to counsel and waived that right. Accordingly, we conclude that the district court did not err in using the 1996 conviction to enhance the instant DUI conviction to a felony.

Having considered Wood's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

⁷See id.

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk