

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANTIAGO FLORES GUERRERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44041

FILED

FEB 03 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 third-offense driving under the influence. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant Santiago Flores Guerrero to serve a prison term of 12-30 months, and ordered him to pay a fine of \$2,000.00 and restitution in the amount of \$614.29.

Guerrero's sole contention on appeal is that the district court erred at sentencing by admitting into evidence two prior misdemeanor convictions in order to enhance the instant conviction to a felony. Guerrero argues that his: (1) Utah 2001 DUI conviction was invalid for enhancement purposes because he proceeded without an interpreter, and (2) Elko County 2001 conviction was invalid because the interpreter was also the court clerk. We disagree with Guerrero's contention.

To establish the validity of a prior misdemeanor conviction, this court has stated that the prosecution must "affirmatively show either that counsel was present or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior

misdemeanor proceedings.”¹ With regard to advising a defendant choosing to waive the right to counsel, “[t]he same stringent standard does not apply to guilty pleas in misdemeanor cases” as applies in felony cases.² For example, in Koenig v. State, this court affirmed the use of a prior misdemeanor conviction to enhance a 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.³

In the instant case, we conclude that the State has met its burden and demonstrated that the spirit of constitutional principles was respected. Prior to sentencing, the State provided the district court with numerous court records establishing the validity of both of the challenged misdemeanor convictions. Further, at the sentencing hearing, counsel for Guerrero conceded that there was nothing in the record that indicated that Guerrero did not understand the proceedings. In admitting the prior convictions, the district court made the following statement:

There is nothing in the record to indicate that the defendant failed to understand or did not understand what was going on in the lower courts.

Defendant asked me not to presume that he understood, well, you are also asking me to presume that he didn't understand.

At least from a record standpoint, . . . there were appropriate waivers of counsel, and the offenses, in the Court's mind, fit within Koenig.

¹Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

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


³See id.

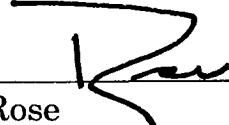
The Court believes the spirit of constitutional principles were followed in the case.


We agree and conclude that the district court did not err in admitting the two prior misdemeanor convictions for enhancement purposes.

Accordingly, having considered Guerrero's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Hardesty

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk