

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAIAS MANRRIQUE ZURITA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44365

FILED

JUN 08 2005

J. Smith
DEPUTY CLERK
CLERK OF SUPREME COURT

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of driving under the influence with two or more prior convictions. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant to a prison term of 12 to 30 months and ordered appellant to pay a fine in the amount of \$2,000.00.

Appellant contends that the district court erred by denying his motion to strike his prior convictions. Appellant specifically reserved the right to appeal this issue as part of his guilty plea agreement.¹

"[I]n order to rely on a prior misdemeanor judgment of conviction for enhancement purposes, the state [has] the burden of proving either that the defendant was represented by counsel or validly waived that right, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings."²

¹See NRS 174.035(3).

²Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991) (citing with approval, Koenig v. State, 99 Nev. 780, 672 P.2d 37 (1983)).

In the instant case, the State provided evidence of two convictions from the state of Texas. The first conviction is dated November 18, 1999. The documents produced by the State included the information, a judgment pursuant to a plea of guilty or no contest, and a list outlining the conditions of community supervision. The actual judgment states that the defendant waived counsel knowingly, voluntarily and intelligently, that he was informed of the range of punishment, that the defendant was mentally competent and entering a voluntary plea, and that he waived the right to a trial by jury. Although the actual judgment is not signed by the judge, it bears appellant's thumbprint and initials. Moreover, the document containing the conditions of community supervision is signed by the judge, and it states that it is incorporated as part of the attached judgment.

The second conviction is dated October 30, 2000. As evidence of the conviction, the State produced the information, the judgment, and the conditions of community supervision. For this particular conviction, however, appellant was represented by counsel and the judgment is actually signed by the judge.


""[I]n evaluating the court records made in municipal court misdemeanor prosecutions, the realities of the typical environment of such prosecutions cannot be ignored, and where the court records reflect that respect was accorded to 'the spirit of constitutional principles,' those records 'should be deemed constitutionally adequate.'""³


³Polson v. State, 108 Nev. 1044, 1049, 843 P.2d 825, 828 (1992) (quoting Jones v. State, 105 Nev. 124, 126, 771 P.2d 154, 155 (1989)).

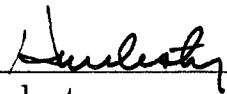
Based on our review of the record, we conclude that the State has adequately demonstrated that the spirit of constitutional principles was respected in the prior misdemeanor proceedings, and that the district court did not, therefore, err by finding the convictions to be valid for enhancement purposes.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jerome Polaha, District Judge
Walter B. Fey
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk