

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON N. MIGUEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44827

FILED

JAN 19 2006

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 jury verdict, of one count of felony driving while under the influence (DUI). First Judicial District Court, Carson City; William A. Maddox, Judge. The district court sentenced appellant Brandon N. Miguel to serve a prison term of 12 to 30 months.

Miguel contends that the district court erred in using his prior 1997 DUI conviction for enhancement purposes because it was obtained in violation of his Sixth Amendment right to counsel. Specifically, Miguel contends that the waiver of the right to counsel was invalid because it was obtained through prosecutorial and judicial misconduct occurring when both the district attorney and the justice's court ignored Miguel's express invocation of his right to counsel. We conclude that Miguel's contention lacks merit.

To establish the validity of a prior misdemeanor conviction, the State 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 In cases where the defendant was not represented by counsel, the State has the burden to present evidence showing that the defendant validly waived counsel.² If the State meets its evidentiary burden by proffering court records showing a waiver of the right to counsel, the evidentiary burden then shifts to the defendant to overcome the presumption of regularity given to the court records.³ In order to rebut the presumption, a defendant must present some evidence that the waiver of the right to counsel was invalid or that the spirit of constitutional principles was otherwise violated.⁴

In this case, the State met its evidentiary burden by proffering court records of the 1997 conviction that included two signed written forms wherein Miguel expressly waived his right to an attorney. Although Miguel testified at the suppression hearing that he invoked his right to an attorney prior to executing the written waivers, the district court did not find his testimony credible. In particular, the district court found that Miguel's right to counsel was not violated, and that Miguel's written waivers of his right to an attorney were valid and unequivocal.⁵ We

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

²See Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996).

³Id.


⁴Id.


⁵Cf. Bonds v. State, 105 Nev. 827, 784 P.2d 1 (1989) (holding that the district court erred in using a prior DUI conviction for enhancement purposes because the court records contained an ambiguous waiver of the right to counsel).

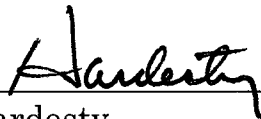
conclude that the district court's finding that Miguel validly waived his right to counsel is supported by substantial evidence. Accordingly, the district court did not err in denying the motion to suppress.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. William A. Maddox, District Judge
James Andre Boles
Attorney General
Carson City District Attorney
Carson City Clerk