

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAVID CATINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46410

FILED

APR 05 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richard
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. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant James David Catino to a prison term of 12 to 48 months, and ordered him to pay a fine of \$2,000.00.

Catino contends that one of his prior convictions is constitutionally invalid because the waiver of counsel is ambiguous in the court documents from that conviction. Specifically, Catino argues that the waiver of rights form is unclear because it states, "I understand I have the right to have an attorney represent me, and if I cannot afford an attorney the Court will appoint one, and I give up this right or I am represented by _____." The blank at the end of the sentence is filled in with "Pro Per." Catino initialed this line, along with all the others on the form. Catino argues that the waiver is ambiguous because it states that he either gives up the right or is represented by "Pro Per."

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 the court 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 met its burden and demonstrated that the spirit of constitutional principles was respected. Catino was originally represented by counsel, who withdrew before Catino entered his plea. Catino signed and initialed a waiver of rights form which contained acknowledgements that appellant understood the constitutional rights he was waiving by pleading guilty. The justice court minutes also show that Catino was thoroughly canvassed regarding his constitutional rights, including the right to counsel. In the minutes, after the recitation of constitutional rights, there is a sentence which states: "Defendant understood Defendant would be waiving these Constitutional rights by pleading Guilty or No Contest." Although Catino is correct in pointing out that he did not actually waive the right to an attorney by pleading guilty, we conclude that any ambiguity in this regard is not fatal.

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.

Based on the totality of the circumstances, we conclude that the prior conviction was constitutionally valid. Accordingly, we conclude that the district court did not err in using the 1998 conviction to enhance Catino's sentence in the instant case to a felony.⁴

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

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

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

⁴The State asks this court to hold that collateral attacks on prior convictions should be strictly limited. As the State concedes, we have previously declined to adopt such a rule, and we decline the State's invitation to revisit that decision. See Paschall v. State, 116 Nev. 911, 913, n.2, 8 P.3d 851, 852, n.2 (2000).