

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON LERAY PETERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46467

**FILED**

MAY 02 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
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; Steven R. Kosach, Judge. The district court sentenced appellant Jason Leray Peterson to serve a prison term of 12 to 30 months.

Peterson's sole contention is that the district court erred in using one of his prior misdemeanor DUI convictions for enhancement purposes because it was not constitutionally valid. In particular, Peterson contends that his waiver of the right to counsel in the 1999 misdemeanor DUI case was ambiguous. The court records of the 1999 Elko conviction include a signed and initialed waiver of rights forms with the following paragraph:

That I am entitled to be represented by an attorney at all times throughout my case. That if I cannot afford an attorney, an attorney will be appointed to represent me at no cost to me if the law allows.

(Emphasis added.) Peterson argues that the waiver was ambiguous because "the phrase 'if the law allows' can mislead one into believing that an attorney may not be appointed and seduce a defendant into waiving his right to an attorney." We conclude that Peterson'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."<sup>1</sup> 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.<sup>2</sup> If the State proffers 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 court records.<sup>3</sup>

In this case, the State met its evidentiary burden by proffering court records of the 1999 conviction indicating that Peterson's waiver of the right to counsel was voluntary and knowing. The justice court's record of the proceedings indicates that the judge personally advised Peterson of his "rights to an attorney in [the] matter either private or court appointed." Additionally, in the waiver of rights form, which was signed by both Peterson and the judge, Peterson acknowledged that he understood his constitutional rights and desired to waive them and plead guilty. Finally, Peterson failed to present evidence that he misunderstood his right to counsel to overcome the presumption of the validity of the

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


<sup>2</sup>See Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996); cf. 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).

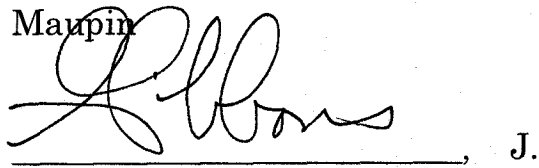
<sup>3</sup>Davenport, 112 Nev. at 478, 915 P.2d at 880.

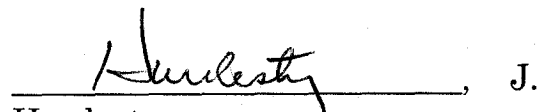
waiver in the court records. Accordingly, we conclude that the district court's finding that Peterson validly waived his right to counsel is supported by substantial evidence.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk