

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DEAN ABELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46608

**FILED**

MAY 22 2006

JANET M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving while under the influence of alcohol (DUI). Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Anthony Dean Abell to serve a prison term of 12 to 32 months.

Abell's sole contention is that the district court erred in using his prior misdemeanor DUI convictions for enhancement purposes because they were not constitutionally valid. In particular, Abell contends that the waiver of the right to counsel in the court records of the 1999 and 2000 misdemeanor DUI cases was ambiguous. The court records of the 1999 and 2000 Reno DUI convictions both include a signed and initialed waiver of rights form with the following paragraph:

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: \_\_\_\_\_

In the 1999 court record, the words "PRO PER" were written in the line on the form, while the line was left blank on the form in the 2000 case. Abell argues that the waivers were ambiguous because "there is no indication that [he] asked for or received appointed counsel [and,] . . . what the

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typed-in 'PRO PER' means is left to speculation." We conclude that Abell'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 the right to 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 and 2000 convictions indicating that Abell's waivers of the right to counsel were voluntary and knowing. The court records of the 1999 and 2000 proceedings indicate that the judge personally advised Abell of his constitutional rights. Additionally, in the waiver of rights forms, signed by both Abell and the judge, Abell acknowledged that he understood his constitutional rights, including the constitutional right to an attorney, and desired to waive those rights and

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

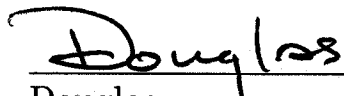
<sup>2</sup>See Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996); cf. Bonds v. State, 105 Nev. 827, 784 P.2d 1 (1989) (holding that the district court erred in using a prior DUI conviction for enhancement purposes because the court records contained an ambiguous waiver of the right to counsel).

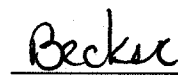
<sup>3</sup>Davenport, 112 Nev. at 478, 915 P.2d at 880.

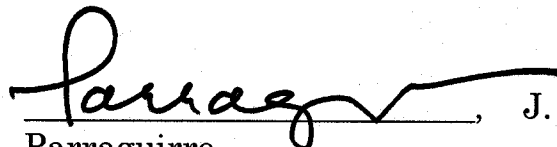
plead guilty. Finally, Abell failed to allege or present evidence that he misunderstood his right to counsel to overcome the presumption of the validity of the waiver in the court records. Accordingly, we conclude that the district court's finding that Abell validly waived his right to counsel is supported by substantial evidence.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, 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