

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO RUIZ RUBIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48024

FILED

MAY 11 2007

JENNIFER M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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). Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Gustavo Ruiz Rubio to serve a prison term of 12 to 30 months.

Rubio contends that the district court erred in using his prior misdemeanor DUI convictions for enhancement purposes. Specifically, Rubio argues that "there is no way to determine whether [he] was either represented by counsel, or knowingly and voluntarily waived his rights" given Rubio's young age, limited education, and the fact that he only reads and speaks Spanish. We disagree.

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

07-10534

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 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.³

In this case, the State met its evidentiary burden by proffering certified court records of two prior misdemeanor DUI convictions from the North Las Vegas Municipal Court. The court records indicate that Rubio knowingly and voluntarily waived the right to counsel in the misdemeanor proceedings. In particular, the court records include Spanish-language waiver of rights forms, wherein Rubio was advised of his right to an attorney and expressly waived that right. In each case, the waiver of rights form was signed by both Rubio and the Spanish-language interpreter. Rubio's argument about his young age and limited education is insufficient to overcome the presumption of the validity of the waivers in the court records. Accordingly, we conclude that the district court's

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

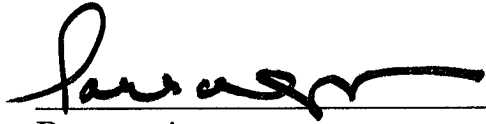
²See Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996); cf. Bonds v. State, 105 Nev. 827, 784 P.2d 1 (1989) (holding that the district court erred in using a prior DUI conviction for enhancement purposes because the court records contained an ambiguous waiver of the right to counsel).

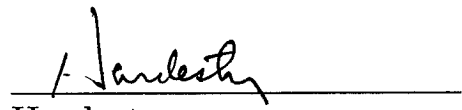
³Davenport, 112 Nev. at 478, 915 P.2d at 880 (quoting Dressler, 107 Nev. at 693, 819 P.2d at 1292-93).


finding that Rubio validly waived his right to counsel is supported by substantial evidence.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Lee A. Gates, District Judge
Law Offices of Cristina Hinds, Esq.
Mueller & Associates
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk