

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON MICHAEL HATCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48936

FILED

JUN 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
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 under the influence (DUI). Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Jason Michael Hatch to serve a prison term of 12-32 months and ordered him to pay a fine of \$2,000.00.

Hatch contends that the district court erred by denying his motion to strike and/or suppress the State's use of one of his prior misdemeanor DUI convictions for enhancement purposes. Hatch argues that his 2001 San Joaquin County, California, misdemeanor DUI conviction was not constitutionally valid because his waiver of the right to counsel was ambiguous. Hatch concedes "there were indications that [he] knew of his right to counsel, but it was not clear that he waived those rights." Specifically, Hatch claims that (1) the 2001 judgment of conviction did not contain a waiver of attorney form, and (2) the waiver of attorney form, forwarded from California only after he filed his motion to strike, was not certified and contained only his signature, a date-stamp, and no other information connecting it to the specific offense. The district court conducted a hearing and denied Hatch's motion.

To establish the validity of a prior misdemeanor conviction, the State must show by a preponderance of the evidence “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 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 the instant case, we conclude that the State has met its burden and demonstrated that the spirit of constitutional principles was respected. The State produced a waiver of attorney form signed by both Hatch and Superior Court Judge Abdallah. Although the waiver of attorney form did not list a case number or specify a crime, it was signed by Hatch on the same day he entered his guilty plea and was convicted of misdemeanor DUI – March 1, 2001. The State provided a waiver of rights form, also signed on March 1, 2001, by both Hatch and Judge Abdallah, wherein the court declared that “having questioned the defendant concerning the defendant’s constitutional rights . . . [the court] finds that the defendant has expressly, knowingly, understandingly and intelligently

¹Dressler v. State, 107 Nev. 686, 693, 697, 819 P.2d 1288, 1293, 1295 (1991).

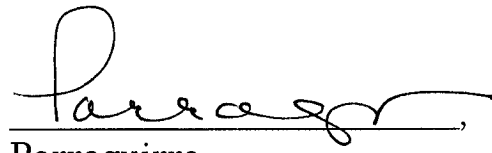
²See Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996).

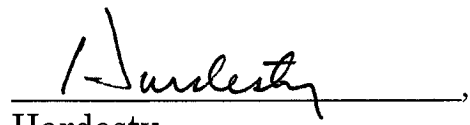
³Davenport, 112 Nev. at 478, 915 P.2d at 880.

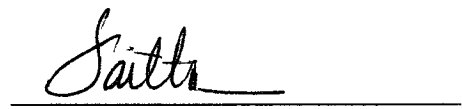
waived his or her constitutional rights.” The State produced a document titled, “Legal Rights of a Defendant Charged With Misdemeanor,” signed by Hatch and initialed by Judge Abdallah, also on March 1, 2001. The superior court clerk minutes indicate that a waiver of attorney form was “in file.” Based on the documentary evidence provided by the State, the district court, among other things, found that Hatch “knowingly, intelligently, and voluntarily waived his right to counsel regarding his 2001 conviction.” We agree and conclude that the district court did not err in using the 2001 misdemeanor DUI conviction to enhance the instant offense to a felony.

Having considered Hatch’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

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