

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK LYLE GLEASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51452

FILED

APR 13 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY U. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a bench trial, of one count of felony driving while under the influence (DUI). First Judicial District Court, Carson City; William A. Maddox, Judge. The district court sentenced appellant Patrick Lyle Gleason to serve a prison term of 24 to 60 months and imposed a fine of \$2,000.

Gleason contends that the district court erred by denying his motion to strike a 1989 felony judgment of conviction that was used to enhance his current DUI offense to a felony. Gleason specifically claims that the district court had the authority to consider his collateral attack on the 1989 felony judgment of conviction, and he asserts that one of the misdemeanor convictions that were used to enhance his 1989 DUI conviction to a felony was constitutionally infirm because he was not represented by counsel and did not affirmatively waive his right to counsel during that proceeding.

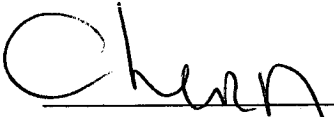



The use of prior convictions for enhancement purposes is governed by different standards depending on whether the prior conviction is for a misdemeanor or a felony. Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). To use a prior felony conviction for enhancement purposes, the State must bear the initial burden of production, which is met by presenting prima facie evidence of the existence of the prior conviction. Id. If the record of the prior conviction, on its face, raises a presumption of constitutional infirmity, then the State must prove by a preponderance of the evidence that the prior conviction is constitutionally valid. Id. at 697-98, 819 P.2d at 1295-96. However, if the record does not, on its face, raise a presumption of constitutional infirmity, then the conviction is afforded a presumption of regularity. Id. at 698, 819 P.2d at 1296. To overcome the presumption of regularity, the defendant must establish through a preponderance of the evidence that the prior conviction is constitutionally infirm. Id.

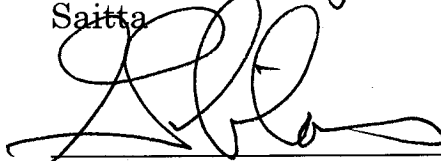
Here, the State met its initial burden of production by presenting evidence of Gleason's 1989 felony DUI conviction. The record of this conviction does not, on its face, raise a presumption of constitutional infirmity. And Gleason is unable to overcome the presumption of regularity afforded this conviction because, at his 1989 sentencing hearing, he expressly waived any objections he had to the prior misdemeanor convictions that were used to enhance this conviction to a felony. See generally Krauss v. State, 116 Nev. 307, 311, 998 P.2d 163, 165 (2000) (holding that a defendant may "stipulate to or waive proof of the prior convictions at sentencing"). Under these circumstances, we

conclude that the district court did not err by denying Gleason's motion to strike the 1989 felony judgment of conviction. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: First Judicial District Court Dept. 2, District Judge
Kenneth A. Stover
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk