

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASPER PHILLIP FERGUSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34723

**FILED**

APR 11 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of driving under the influence, and one count of driving while having .10 percent or more by weight of alcohol in the blood, both violations of NRS 484.379 and NRS 484.3792.<sup>1</sup> Based on the admission of two prior misdemeanor DUI convictions within the past seven years, the district court sentenced appellant to two concurrent terms of 19 to 48 months in the Nevada State Prison. The district court further ordered appellant to pay a \$2,000 fine, routine administrative assessment and chemical analysis fees, restitution of \$12,939.00, and attorney's fees to the Washoe County Public Defender's Office of \$700.00. Appellant challenges the validity of the two prior misdemeanor DUI convictions used to enhance his current convictions to felonies.

Appellant first contends that, although he signed acknowledgements expressly waiving his right to counsel for each of the two prior convictions, the spirit of constitutional principles was not met, and his waivers were

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

not knowing and voluntary. Consequently, appellant contends, the prior misdemeanor convictions cannot support a felony sentence in this case. See Davenport v. State, 112 Nev. 475, 915 P.2d 878 (1996); Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991) (holding that 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 before the record of the prior misdemeanor may be used for enhancement purposes).

After careful review of the documents before this court, we conclude that appellant has neither demonstrated that the district court erred in rejecting appellant's challenges to the two prior convictions, nor demonstrated that his waivers of counsel were invalid.<sup>2</sup> Specifically, with respect to case number RJC 81,179, we conclude that even if appellant arguably presented a prima facie case that his waiver of counsel was irregular, ultimately, the State was able to overcome appellant's case and appellant has not demonstrated error. Second, we conclude that appellant failed to establish a prima facie challenge to the validity of the conviction in case number RJC 83,406. See Dressler, 107 Nev. at 693, 819 P.2d at 1292-93. Appellant was properly sentenced pursuant to NRS 484.3792(c).

Finally, appellant contends that his convictions for both driving under the influence and driving while having .10

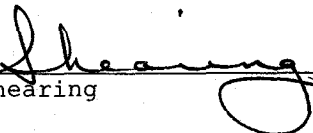
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<sup>2</sup>Prior to sentencing appellant filed a motion to suppress the prior convictions; the State opposed the motion. The district court construed the motion and opposition as points and authorities in opposition to and in support of evidence presented at sentencing. The district court then held a complete evidentiary hearing at which Justices of the Peace Fidel Salcedo and Daniel Wong, and appellant and his wife all testified regarding the prior convictions.

percent or more by weight of alcohol in the blood are redundant, and the conviction for the second count should be vacated. See *Dossey v. State*, 114 Nev. 904, 964 P.2d 782 (1998) (concluding that the legislature intended the subsections of NRS 484.379(1) to define alternative means of committing a single offense, not separable offenses permitting a conviction of multiple counts based on a single act); see also *Albitre v. State*, 103 Nev. 281, 738 P.2d 1307 (1987). The State concedes that the convictions in this case are redundant. Accordingly, we remand this matter to the district court to vacate appellant's conviction for driving while having .10 percent or more by weight of alcohol in the blood and enter an amended judgment of conviction. We otherwise affirm the judgment of conviction.

It is so ORDERED.

  
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Maupin J.

  
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Shearing J.

  
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Becker J.

cc: Hon. James W. Hardesty, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk