

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE PEREZ LUNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34875

FILED

DEC 27 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of driving under the influence of alcohol. The district court determined that appellant had two constitutionally valid prior convictions for driving under the influence and sentenced appellant for third offense driving under the influence. The court sentenced appellant to serve fifteen (15) to thirty-eight (38) months in prison, to be served consecutively to any prior convictions. The court also ordered appellant to pay a \$2,000.00 fine.

Appellant contends that the district court should have suppressed the results of his breath and blood tests because he was not provided with an interpreter to administer the implied consent admonishment. We disagree.

Appellant relies on NRS 171.1536, which requires the presence of an interpreter before police interrogate or take the statement of a "handicapped person." NRS 171.1536 is not applicable; appellant is not a "handicapped person" as defined in the relevant statutes. See NRS 50.050; see also *Ton v. State*, 110 Nev. 970, 878 P.2d 986 (1994). However, "[a] criminal defendant has a due process right to an interpreter at all crucial stages of the criminal process, . . . if that defendant in fact does not understand the English language."

Ton, 110 Nev. at 971, 878 P.2d at 987 (emphasis added). Appellant has not attempted to demonstrate that the administration of the implied consent law and a chemical sobriety test is a crucial stage of the criminal process. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (this court need not consider contentions that are not supported by relevant authority). We conclude that the absence of an interpreter during an implied consent admonishment and chemical sobriety test does not implicate a defendant's right to a fair trial and, therefore, is not a crucial stage of the criminal process. Cf. Robertson v. State, 109 Nev. 1086, 1088, 863 P.2d 1040, 1041-42 (1993); State v. Smith, 105 Nev. 293, 296 n.1, 774 P.2d 1037, 1039 n.1 (1989); McCharles v. State, Dep't of Mtr. Vehicles, 99 Nev. 831, 833-34, 673 P.2d 488, 489-90 (1983). Moreover, we note that the district court found that appellant was sufficiently fluent in the English language to understand the implied consent admonishment. We conclude that this factual finding is entitled to deference and is supported by the record. Accordingly, even if the giving of the admonishment and test constituted a crucial stage, appellant was not entitled to an interpreter.

Next, appellant contends that the district court should have suppressed the blood test result because appellant had already submitted to a breath test and because the blood test was conducted more than two hours after appellant drove or was in actual physical control of a motor vehicle. We disagree with both contentions.

First, appellant has failed to cite any relevant authority in support of the proposition that the blood test was illegal because appellant had already submitted to a breath test. We therefore need not consider this contention.

See Maresca, 103 Nev. at 673, 748 P.2d at 6. Nonetheless, after reviewing the record, we conclude that the officers substantially complied with the provisions of NRS 484.383 and, therefore, the district court did not err in admitting the evidence regarding the blood test.¹ See NRS 484.389(2). Additionally, we conclude that the district court did not abuse its discretion in admitting the blood test results even though the test was conducted more than two hours after appellant drove his vehicle. See Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1126 (1996) (district court has "considerable discretion" in determining the relevance and admissibility of evidence, and this court will not disturb that determination absent clear abuse of discretion).

Finally, appellant contends that his 1994 conviction for driving under the influence was constitutionally invalid for enhancement purposes because he was not provided with an interpreter when he entered his guilty plea. 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 proceedings." Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). The defendant may rebut the state's showing, and the issue is decided in favor of the party producing a preponderance of the evidence. Id. at 693, 819 P.2d at 1293.


¹In particular, we note that NRS 484.383(4)(c)(2)(I) provides that an officer may require a driver to submit to a blood test where the officer has reasonable grounds to believe that the driver has a prior conviction for driving under the influence within the previous seven years. Here, the officers learned of appellant's prior convictions after appellant had submitted to a breath test. NRS 484.383 is silent as to whether multiple tests may be conducted under such circumstances.

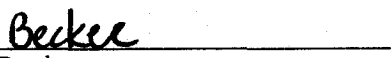
As previously noted, a criminal defendant is entitled to an interpreter at all crucial stages of the criminal process. Ton, 110 Nev. at 971, 878 P.2d at 987. We conclude that the entry of a guilty plea is a crucial stage of the criminal process. Moreover, where a criminal defendant does not understand the English language, the absence of an interpreter would implicate the validity of a waiver of the right to counsel and, as a result, the constitutional validity of a prior conviction for enhancement purposes. Nonetheless, after reviewing the record and giving the appropriate deference to the district court's factual findings and credibility determinations, we conclude that appellant has failed to demonstrate that he did not sufficiently understand the English language to enter his guilty plea in 1994 such that the absence of an interpreter would undermine the constitutional validity of the prior conviction. We therefore conclude that the district court did not err in determining that the 1994 conviction was constitutionally valid for enhancement purposes.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. J. Michael Memeo, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk