

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35060

DIVEN ROBERT BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FILED

JUN 16 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of felony driving under the influence in violation of NRS 484.379 and NRS 484.3792. The district court sentenced appellant to 12 to 30 months in prison and ordered appellant to pay a \$2,000.00 fine.

Appellant contends that the district court erred in denying a motion to strike a prior conviction. In particular, appellant contends that his 1993 misdemeanor DUI conviction in California is constitutionally infirm for enhancement purposes because the record of that conviction does not "disclose the [appellant] was properly advised of his rights which he waived prior to pleading 'Guilty.'" We disagree.

To use a prior misdemeanor conviction for enhancement purposes, the State has the "burden of proving either that the defendant was represented by counsel or validly waived that right, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings." *Dressler v. State*, 107 Nev. 686,

00-10258

697, 819 P.2d 1288, 1295 (1991). "[I]f the state produces a record of a judgment of conviction which shows that the defendant was represented by counsel, then it is presumed that the conviction is constitutionally adequate, i.e., that the spirit of constitutional principles was respected." Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996). Once the State has demonstrated that the defendant was represented by counsel, the burden is on the defendant to present evidence to rebut the presumption that the conviction is constitutionally adequate. Id.

In this case, the State produced a record of a judgment of conviction showing that appellant was represented by counsel in the prior misdemeanor proceedings in California. Accordingly, it must be presumed that the prior misdemeanor conviction is constitutionally adequate for enhancement purposes. Based on our review of the record on appeal, we conclude that appellant failed to rebut this presumption. Therefore, we conclude that the prior California misdemeanor conviction was properly used for enhancement purposes.¹

¹To the extent that appellant contends that the documents submitted by the State were not sufficient to demonstrate that appellant had suffered a prior DUI conviction in the California proceedings, we disagree. A prior misdemeanor DUI conviction need not be shown by a certified copy of a judgment of conviction, but may be shown by a certified copy of docket sheets and other court documents so long as they show that the defendant was convicted of a misdemeanor DUI in the prior proceedings. See Pettipas v. State, 106 Nev. 377, 379, 794 P.2d 705, 706 (1990); see also Isom v. State, 105 Nev. 391, 394, 776 P.2d 543, 546 (1989) (evidence of citation and plea of nolo contendere sufficient evidence of prior misdemeanor conviction).

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

ORDER this appeal dismissed.²

Young J.
Young
Agosti J.
Agosti
Leavitt J.
Leavitt

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Xavier Gonzales
Nye County Clerk

²On January 14, 2000, this court received appellant's supplemental fast track statement. NRAP 3C(g) provides that a supplemental fast track statement may be filed "by appellate counsel if appellate counsel differs from trial counsel." Here, appellate counsel does not differ from trial counsel. Moreover, counsel for appellant has not requested permission to file a supplemental fast track statement. Accordingly, we direct the clerk of this court to return unfiled the supplemental fast track statement received on January 14, 2000.