

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WESLEY GARLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57971

FILED

NOV 18 2011

TRACIE K. LINDEMAN
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 felony DUI. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Appellant John Wesley Garland contends that the district court erred by denying his motion to strike one of his prior misdemeanor DUI convictions because the record before the court did not indicate that he was advised of his right to court appointed counsel before waiving his right to counsel during those proceedings.

In order to rely on a prior misdemeanor conviction where a defendant was not represented by counsel, the State has the burden to produce evidence demonstrating, among other things, that the defendant validly waived the right to counsel. See Picetti v. State, 124 Nev. 782, 790-92, 192 P.3d 704, 709-11 (2008); Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878 880 (1996); Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). Here, the State introduced certified copies of a prior misdemeanor DUI conviction from Idaho which states that Garland

waived his right to counsel.¹ The district court noted that Garland waived his right to counsel in the prior proceedings but made no findings regarding the validity of the waiver.

We conclude that the district court erred by relying on the prior conviction for enhancement purposes without first determining that Garland was aware of his right to court-appointed counsel. See Gallego v. State, 117 Nev. 348, 368, 23 P.3d 227, 241 (2001) (waiver requires the knowing and voluntary relinquishment of a right). Nevertheless, we conclude that the State met its evidentiary burden and the district court correctly denied Garland's motion to strike. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm the decision of the district court if it reached the correct result for the wrong reason). The Idaho conviction states that Garland was advised of his rights in compliance with Idaho Misdemeanor Criminal Rule (IMCR) 6(c). That rule provides that a defendant must be advised of his "right to court appointed counsel at public expense if he is indigent," where the charged offense carries a possible punishment of a term of imprisonment or if conviction of the offense could result in the enhancement of a subsequent conviction from a misdemeanor to a felony. IMCR 6(c) (2002). Pursuant to Idaho law, a misdemeanor DUI conviction carries a possible term of imprisonment and may be used to enhance a subsequent DUI conviction. Idaho Code § 18-8005 (2006). Thus, the judgment of conviction indicates that Garland was advised of his right to court-appointed counsel.

¹The State also presented a prior misdemeanor conviction from Washington, the validity of which Garland does not challenge.

Garland also contends that the judgment of conviction is invalid because it was entered more than 10 days after the oral pronouncement of sentence in violation of NRAP 4(b)(5)(A). Although the judgment of conviction was entered one day late, see NRAP 4(b)(4) (defining "entry" of an order as one that has been "signed by the judge and filed with the clerk"); NRAP 26(a)(2) (computation of time), Garland has failed to demonstrate or allege any prejudice and we conclude that no relief is warranted. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk