

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT MARK RATLIFF,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68421

FILED

DEC 18 2015

TRACIE K. LINDEMAN  
CLERK OF THE APPEALS COURT  
BY *[Signature]*  
CHIEF CLERK


ORDER OF AFFIRMANCE

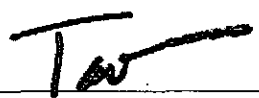
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence of intoxicating liquor. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Appellant Scott Mark Ratliff argues the district court erroneously enhanced his driving under the influence (DUI) offense to a felony. Ratliff argues the State failed to prove the constitutional validity of one of his prior DUI convictions because it failed to show he had waived his right to an attorney for that conviction. "If the State seeks to use prior misdemeanor convictions to enhance a current offense to a felony, it must also make an affirmative showing of the constitutional validity of the prior convictions." *Hobbs v. State*, 127 Nev. 234, 241, 251 P.3d 177, 181 (2011). "This includes demonstrating 'either that counsel was present [during the prior misdemeanor proceedings] or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings.'" *Id.* (alteration in original) (quoting *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991)). We conclude Ratliff fails to demonstrate he is entitled to relief.

Here, the district court noted Ratliff's written waiver of rights form for the prior DUI contained an inconsistency because Ratliff had initialed paragraphs that acknowledged he waived his right to an attorney and had consulted with an attorney. However, the district court reviewed a video recording of Ratliff's oral waiver of rights and entry of his plea. The district court concluded the justice court explained Ratliff's right to an attorney for that proceeding, Ratliff acknowledged he understood that right, and Ratliff waived that right prior to entry of that guilty plea. The district court concluded, based on its review of the record for the prior misdemeanor DUI conviction, Ratliff had knowingly waived his right to an attorney. The district court therefore concluded the prior DUI was constitutionally valid for use in enhancing the instant offense to a felony. See NRS 484C.400(1)(c). Because the record before the district court demonstrated Ratliff formally waived his right counsel for the prior DUI conviction, we affirm the decision of the district court. See *Bonds v. State*, 105 Nev. 827, 828, 784 P.2d 1, 2 (1989). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Alvin R. Kacin, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk