

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN PAUL O'LEARY,

No. 38146

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 16 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence in violation of NRS 484.379 and 484.3792(1)(c). The district court sentenced appellant to serve 12 to 30 months in prison.

Appellant's sole contention is that the district court erred in using his prior DUI conviction in Tooele County, Utah to enhance the instant offense to a felony. In particular, appellant argues that the Tooele conviction is not constitutionally valid for enhancement purposes because while the docket sheet for that case indicates that appellant was represented by counsel and entered a no contest plea, it does not indicate that appellant was advised of and waived his constitutional rights. We conclude that this argument lacks merit.

In Dressler v. State,¹ we reiterated that "in order to rely on a prior misdemeanor judgment of conviction for enhancement purposes, the state had 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."² Subsequently, in Davenport v. State,³ we held that it will be presumed that a prior misdemeanor conviction is constitutionally adequate, meaning that the spirit of constitutional principles was

¹107 Nev. 686, 819 P.2d 1288 (1991).

²Id. at 697, 819 P.2d at 1295.

³112 Nev. 475, 915 P.2d 878 (1996).

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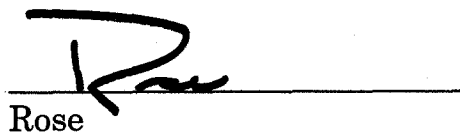
respected, where the State "produces a record of a judgment of conviction which shows that the defendant was represented by counsel."⁴ We further explained that once the State presents such a record, showing that the defendant was represented by counsel in the prior proceedings, "[t]he burden is then on the defendant to present evidence to rebut this presumption."⁵

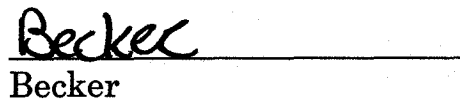
Here, the State presented the docket entries for the Tooele conviction. Those documents indicate that appellant was represented by counsel in the Tooele County proceedings. Because appellant was represented by counsel, we will presume that the spirit of constitutional principles was respected in the Tooele County proceedings. Appellant failed to present any evidence to rebut that presumption. Accordingly, we conclude that the district court did not err in using the Tooele conviction for enhancement purposes.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Jack B. Ames, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk

⁴Id. at 478, 915 P.2d at 880.

⁵Id.