

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT KEEVER NICHOLSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38651

FILED

OCT 16 2002

ORDER OF AFFIRMANCE

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

Appellant Dwight Keever Nicholson appeals from his third conviction of operating a vehicle under the influence of intoxicating liquors or a controlled substance in violation of NRS 484.379 ("DUI"), for which he is currently serving a twelve to thirty-six month sentence in the Nevada State Prison. Nicholson raises several arguments on appeal.

First, Nicholson argues that NRS 484.379 is unconstitutional. We disagree. Recently, we addressed the constitutionality of NRS 484.379 in Williams v. State.¹ For the reasons discussed in Williams, we held that NRS 484.379 is a constitutional statute. Nicholson has not now persuaded us to depart from this decision.

Second, Nicholson argues that his guilty plea for his first conviction for DUI on October 17, 1998, was invalid because he was not represented by counsel and the justice court did not properly canvass him before accepting his plea. We disagree.

We have stated that to rely on 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

¹118 Nev. ___, ___, 50 P.3d 1116, 1119-24 (2002).

the prior misdemeanor proceedings."² In determining whether a guilty plea was properly given, we consider the "totality of the circumstances"³ and such factors as "defendant's comprehension of the consequences of a plea, the voluntariness of a plea and the general validity of a plea."⁴

Here, Nicholson not only signed a waiver to his right to counsel at the time of his guilty plea, but he specifically wrote on the typed waiver form that he was waiving this particular right. The record also demonstrates that Nicholson was orally canvassed by the justice court about his constitutional rights, the crime with which he was charged, and the consequences of pleading guilty. After a careful review of the record, we find no reason to believe that Nicholson's guilty plea was not voluntarily and knowingly given. Therefore, we conclude that the justice court properly accepted Nicholson's plea of guilty to DUI on October 17, 1998, and the State properly used this conviction for enhancement purposes.

Third, Nicholson argues that there was insufficient evidence to convict him of DUI on December 17, 1999. We disagree.

NRS 484.379 sets forth per se limits of alcohol and/or controlled substances under which a person may legally operate a vehicle. Section three of that statute provides further that it is unlawful to operate a vehicle with more than fifty nanograms per milliliter ("ng/ml") of cocaine, fifty ng/ml of cocaine metabolite, two ng/ml of marijuana, or five ng/ml of marijuana metabolite in a person's blood.

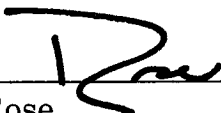
²Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

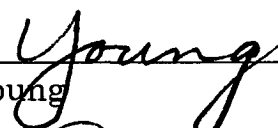
³State v. Freese, 116 Nev. 1097, 1104, 13 P.3d 442, 447 (2000).

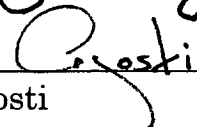
⁴Id. at 1106, 13 P.3d at 448.

Here, Nicholson, with the assistance of counsel, entered into a stipulation of facts that on December 17, 1999, he had a blood alcohol content of 0.096, a cocaine metabolite content of 230 ng/ml, active marijuana content of 4.7 ng/ml, and marijuana metabolite content of 17 ng/ml. A urinalysis result revealed that Nicholson had 1,400 ng/ml of cocaine in his system. In contrast to the blood test, the urinalysis also revealed that Nicholson had 51,000 ng/ml of cocaine metabolite in his system. Evidence was also presented at trial in the form of testimony from Detective Bunyard, the arresting officer, that Nicholson had failed numerous field sobriety tests before he was arrested on December 17, 1999. Even if Nicholson's blood alcohol content was below the legal limit, it is undisputed that he had amounts of marijuana and cocaine in his system well above the legal limit. Given this evidence, we conclude that there was overwhelming evidence to convict Nicholson of DUI on December 17, 1999.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

⁵We have carefully considered the remaining arguments raised by Nicholson and the State and conclude that in light of our decision today, they are without merit.

cc: Hon. Steven R. Kosach, District Judge
Fran Peter Archuleta
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk