

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL GREGORY SCOVIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38825

FILED

MAR 19 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence (DUI). The district court sentenced appellant Paul Gregory Scovil to serve a prison term of 12 to 30 months.

Scovil's sole contention on appeal is that the district court erred in using one of his prior DUI convictions to enhance his DUI sentence to a felony because it was constitutionally infirm. In particular, Scovil argues that his Arizona conviction in 2000 for misdemeanor DUI was invalid because the justice court accepted his guilty plea without advising him about the dangers of self-representation.¹ We conclude that Scovil's contention lacks merit.

¹In support of his contention, Scovil relies upon U.S. v. Akins, 243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing by 276 F.3d 1141 (9th Cir. 2002). Akins held that an element of the crime of possession of a firearm after being convicted of domestic violence was proof of a prior misdemeanor conviction for domestic violence. 243 F.3d at 1202. Because the prior misdemeanor conviction was an element of the crime, the Akins court held that the State had to prove beyond a reasonable doubt that, prior to pleading guilty, the defendant made a knowing and intelligent waiver of counsel, including that he was advised of the dangers of self-representation. 243 F.3d at 1202-03. We conclude that Akins is inapplicable to the instant case because Scovil's prior misdemeanor DUI conviction was not an element of the charged

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To establish the validity of a prior misdemeanor conviction, the State must “affirmatively show either that counsel was present or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings.”² With regard to the waiver of the right to counsel in a misdemeanor case, this court has previously held that “[t]he same stringent standard [with regard to advisement of the defendant that is followed in felony cases] does not apply to guilty pleas in misdemeanor cases.”³ For example, in Koenig v. State, this court affirmed the use of a prior misdemeanor conviction to enhance a sentence imposed in a DUI case where the record of the prior conviction showed that the appellant signed a form stating he was freely and intelligently waiving his right to counsel.⁴

In the instant case, like in Koenig, we conclude that the State has met its burden to show that the spirit of constitutional principles was respected. Prior to sentencing, the State produced a copy of the municipal court records of the prior DUI case from Yuma, Arizona. The judgment of

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crime, but instead, was used to enhance Scovil’s sentence. Further, even assuming that Akins supports Scovil’s contention, we do not deem Akins persuasive. See Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 748 P.2d 494 (1987), *aff’g* Blanton v. City of North Las Vegas, 489 U.S. 538 (1989) (noting that this court is not bound by decisions issued by the federal circuit court of appeal).

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

³Koenig v. State, 99 Nev. 780, 789, 672 P.2d 37, 43 (1983) (affirming enhancement use of prior conviction based on guilty plea where record of prior conviction showed that appellant Pacheco signed form that stated he freely and intelligently waived right to retain counsel).

⁴See id.

conviction was signed by Scovil, and like the form in Koenig, contained an acknowledgement that Scovil understood the constitutional rights he was waiving by pleading no contest. The waiver included, among other things, “[t]he right to the assistance of an attorney at all stages of the proceeding” Additionally, the Arizona judgment of conviction was signed by the municipal court judge, and contained an acknowledgement from the judge that she personally canvassed Scovil on his constitutional rights and found that he entered his plea “knowingly, voluntarily, and intelligently.” Accordingly, the district court did not err in enhancing Scovil’s sentence.

Having considered Scovil’s contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General/Carson City
Eureka County District Attorney
State Public Defender/Carson City
State Public Defender/Ely
Eureka County Clerk