

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY JAMES TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38869

FILED

SEP 09 2002

ORDER OF AFFIRMANCE

JANETTE 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 felony driving while under the influence of alcohol (DUI). The district court sentenced appellant Roy James Taylor to serve a prison term of 12 to 30 months.

Taylor first contends 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, Taylor argues that his 1995 Las Vegas conviction for misdemeanor DUI was invalid because the municipal court judge accepted his guilty plea without advising him about the dangers of self-representation.¹ We conclude that Taylor's contention lacks merit.

¹In support of his contention, Taylor relies upon U.S. v. Akins, 243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing 276 F.3d 1141 (9th Cir. 2002).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 Taylor's prior misdemeanor DUI conviction was not an element of the charged crime, but instead, was used to enhance Taylor's sentence. Further, even

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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 certified copy of the municipal court records of the 1995 DUI case. Those records included a waiver-of-rights included in the judgment, which was signed by Taylor, and contained an acknowledgement that Taylor understood the

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assuming that Akins supports Taylor’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’d 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).

⁴See id.

constitutional rights he was waiving by pleading guilty. The waiver included, among other things, "the right to lawyer." Additionally, the judgment contained a signed acknowledgement from the judge that he personally canvassed Taylor on his constitutional rights and that Taylor "knowingly and intelligently waived counsel." Accordingly, the district court did not err in using the 1995 conviction to enhance Taylor's sentence.

Taylor next contends that the district court erred in using his 1999 Las Vegas DUI misdemeanor conviction to enhance his sentence to a felony because the State failed to proffer sufficient evidence of that conviction. In particular, Taylor argues that the court records are incomplete because the municipal court judge failed to mark two boxes on the judgment form indicating whether Taylor pleaded guilty and was adjudicated guilty. Additionally, Taylor notes that the municipal court judge did not sign the acknowledgement on the waiver-of-rights form. We conclude that the State proffered sufficient evidence of Taylor's 1999 DUI conviction.

To enhance a DUI sentence to a felony based on prior convictions, the State must prove the prior DUI convictions beyond a reasonable doubt.⁵ However, the State need not establish the prior DUI convictions through a formal, written judgment of conviction; other evidence, such as witness testimony or court docket sheets, may be used in support of the district court's finding of a prior DUI conviction.⁶

In the instant matter, the State proffered sufficient documentary evidence of Taylor's prior 1999 misdemeanor DUI conviction.


⁵See Phipps v. State, 111 Nev. 1276, 1280, 903 P.2d 820, 823 (1995).

⁶See Pettipas v. State, 106 Nev. 377, 379, 794 P.2d 705, 706 (1990).

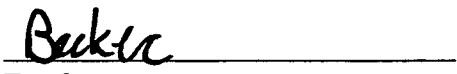
In particular, the State proffered certified copies of the Las Vegas Municipal Court records, including the docket sheet, a written judgment, the criminal complaint, and the waiver-of-rights form. The docket sheet indicates Taylor "change[d] [his] plea to guilty" on October 11, 1999, and was sentenced to serve 2 days in jail on January 18, 2000. Additionally, the judgment indicates that Taylor was "present," "represented by counsel," and "entered a plea." The judgment also includes the specific sentence imposed by the municipal court judge, as well as the judge's signature. We therefore conclude that the documents submitted by the State established beyond a reasonable doubt that Taylor pleaded guilty to and was convicted of DUI in 1999.

Having considered Taylor's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk