

IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRY ISAAC MEDAL-CARDOZA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39372

FILED

MAY 30 2002

JANE FEE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 (DUI). The district court sentenced appellant to serve a prison term of 14 to 35 months.

Appellant 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, appellant argues that his conviction in 1997 for misdemeanor DUI was invalid because the municipal court accepted his guilty plea without advising him about the dangers of self-representation.<sup>1</sup> We conclude that appellant's contention lacks merit.

---

<sup>1</sup>In support of his contention, appellant relies upon U.S. v. Akins, 243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing, 276 F.3d 1141 (9th Cir. 2002).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 appellant's

*continued on next page . . .*

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.”<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup>

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 1997 DUI case. Those records included a waiver of

---

*... continued*

prior misdemeanor DUI conviction was not an element of the charged crime, but instead, was used to enhance appellant’s sentence. Further, even assuming that Akins supports appellant’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).

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

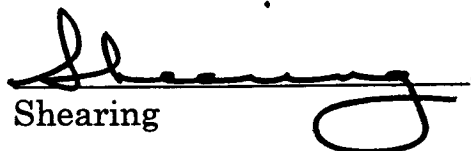
<sup>3</sup>Koenig v. State, 99 Nev. 780, 789, 672 P.2d 37, 43 (1983).

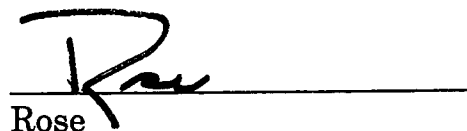
<sup>4</sup>See id.

rights form signed by appellant, which like the form in Koenig, contained an acknowledgement that appellant understood the constitutional rights he was waiving by pleading guilty. The waiver included, among other things, "the right to have an attorney represent me." Additionally, the waiver of rights form was signed by the municipal court judge and contained an acknowledgement from the judge that he personally canvassed appellant on his constitutional rights. Accordingly, the district court did not err in using the 1997 conviction to enhance appellant's sentence.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Janet J. Berry, District Judge  
Larry K. Dunn & Associates  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk