

IN THE SUPREME COURT OF THE STATE OF NEVADA

CUAUHTEMOC CARBAJAL GALVAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39615

FILED  
OCT 29 2002

OCT 29 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one felony count of third-offense domestic violence. The district court sentenced appellant Cuauhtemoc Carbajal Galvan to serve a prison term of 24-60 months.

Galvan's sole contention on appeal is that the district court erred in denying his motion to suppress one of his prior domestic violence convictions because it was constitutionally infirm. In particular, Galvan argues that his California conviction in 1996 for misdemeanor domestic violence (spousal battery) was invalid because the municipal court accepted his guilty plea without advising him about the dangers and disadvantages of self-representation; therefore, Galvan argues, he did not knowingly or intelligently waive his right to counsel. The State sought to use the prior conviction in order to enhance his sentence to a felony.<sup>1</sup> We conclude that Galvan's contention lacks merit.

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<sup>1</sup>See NRS 200.485(1)(c).

In support of his contention, Galvan relies upon U.S. v. Akins, where the United States Court of Appeals for the Ninth Circuit held that, pursuant to statute, 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.<sup>2</sup> 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 and disadvantages of self-representation.<sup>3</sup> We conclude that Akins is inapplicable to the instant case because Galvan's prior misdemeanor domestic violence conviction was not an element of the charged crime, but instead, was used to enhance his sentence. Further, we do not find Akins persuasive.<sup>4</sup>

To establish the validity of a prior misdemeanor conviction, this court has stated that the prosecution 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

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<sup>2</sup>243 F.3d 1199, 1202 (9th Cir. 2001), opinion amended and superseded on denial of rehearing, 276 F.3d 1141 (9th Cir. 2002).

<sup>3</sup>Id. at 1202-03.

<sup>4</sup>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).

misdemeanor proceedings.”<sup>5</sup> With regard to the district court advising a defendant choosing to waive the right to counsel, “[t]he same stringent standard does not apply to guilty pleas in misdemeanor cases” as applies in felony cases.<sup>6</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 only that the appellant signed a form stating that he freely and intelligently waived his right to counsel.<sup>7</sup>

In the instant case, we conclude that the State has met its burden and demonstrated that the spirit of constitutional principles was respected. Galvan concedes that prior to pleading guilty in the earlier misdemeanor case, he was advised of his constitutional rights, including the right to retained or appointed counsel. Further, Galvan read and initialed an advisement of rights form indicating, among other things, that he was advised of his rights prior to pleading guilty. Our review of the municipal court’s minute entries reveals that Galvan personally appeared in court and waived his right to counsel, and that the court found “there was a factual basis for the plea and that all such action by the defendant was free, intelligent, understanding and voluntary.” Therefore, we

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<sup>5</sup>Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

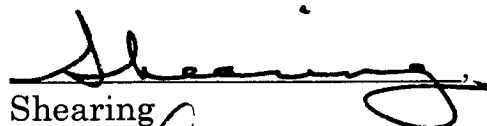
<sup>6</sup>Koenig v. State, 99 Nev. 780, 788-89, 672 P.2d 37, 42-43 (1983).


<sup>7</sup>See id.

conclude that the district court did not err in denying Galvan's motion to suppress.

Having considered Galvan's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. J. Michael Memeo, District Judge  
Lockie & Macfarlan, Ltd.  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk