

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX HOLTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39623

FILED

OCT 15 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of third-offense driving while under the influence of alcohol (DUI). The district court sentenced appellant to serve a prison term of 12 to 30 months. The district court further ordered appellant to pay a fine in the amount of \$2,000.00.

Appellant contends that the district court erred in using one of his prior DUI convictions for enhancement purposes because it was constitutionally infirm. In particular, appellant argues that his conviction of December 19, 1996, 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 appellant's contention lacks merit.

¹In support of his contention, appellant relies upon U.S. v. Akins, 243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing 276 F.3d 1141 (9th Cir. 2002). The Akins court held the State had to prove beyond a reasonable doubt that the defendant who pleaded guilty made a knowing and intelligent waiver of counsel and was advised of the dangers of self-representation. 243 F.3d at 1202-03. The Akins court, however, expressly limited its holding to the federal crime of
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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

In the instant case, prior to sentencing, the State produced a certified copy of the municipal court records of the 1996 DUI case. Those records included a waiver-of-rights form, which was signed by appellant, and contained an acknowledgement that appellant understood the constitutional rights he was waiving by pleading guilty. The waiver, among other advisements, provided: "I understand that I have the right to have an attorney represent me, and if I cannot afford an attorney the Court will appoint one." We conclude that the conviction was constitutionally valid. Accordingly, the district court did not err in using the 1996 conviction to enhance appellant's sentence.

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possession of a firearm after being convicted of domestic violence in which the prior misdemeanor conviction was an element of the crime. Id. 03 We conclude that Akins is inapplicable to the instant case because appellant's 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).


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

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Andrew Puccinelli, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk