

IN THE SUPREME COURT OF THE STATE OF NEVADA

STACY LORRAINE KRUK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39843

FILED

OCT 07 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
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 or drugs (DUI). The district court sentenced appellant Stacy Lorraine Kruk to serve a prison term of 12 to 30 months.

Kruk contends that the district court erred in using one of her prior DUI convictions to enhance her DUI sentence to a felony because it was constitutionally infirm. In particular, Kruk argues that her 2001 Douglas County conviction for misdemeanor DUI was invalid because the justice court accepted her guilty plea without advising her about the dangers of self-representation.<sup>1</sup> We conclude that Kruk's contention lacks merit.

---

<sup>1</sup>In support of her contention, Kruk relies upon U.S. v. Akins, 243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing 276 F.3d 1141 (9th Cir. 2002).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. The Akins court, however, expressly limited its holding to the federal crime of possession of a firearm after being convicted of domestic violence in which the prior misdemeanor conviction was an element of the crime. 243 F.3d at 1202-03. We conclude that Akins is inapplicable to the instant case because Kruk's prior misdemeanor DUI conviction was not an element of the charged crime, but instead, was used to enhance Kruk's sentence.

*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 included a form signed by the appellant advising him of his right to counsel and stating that 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 certified copy of the municipal court records of the 2001 DUI case. Those records included a waiver-of-rights form, which was signed by Kruk, and contained an

---

*... continued*

Further, even assuming that Akins supports Kruk’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).

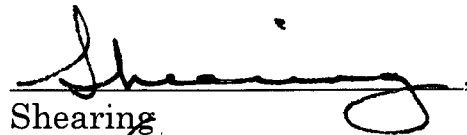
<sup>3</sup>Koenig v. State, 99 Nev. 780, 789, 672 P.2d 37, 43 (1983).


<sup>4</sup>See *id.* at 789 & n.6, 672 P.2d at 43 & n.6.

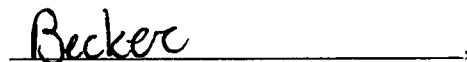
acknowledgement that Kruk understood the constitutional rights she was waiving by pleading guilty. The waiver, among other advisements, provided: "I understand that I have the right to have an attorney represent me, and if I cannot afford an attorney the Court will appoint one." Additionally, the waiver-of-rights form contained a signed acknowledgement from the judge that he personally canvassed Kruk on her constitutional rights and that Kruk's plea was "made voluntarily and with an understanding of the nature of the charges and the consequences of the plea." Accordingly, the district court did not err in using the 2001 conviction to enhance Kruk's sentence.

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

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Leavitt

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

cc: Hon. Michael R. Griffin, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk