

IN THE SUPREME COURT OF THE STATE OF NEVADA

HILARIO TORRES-ARELLANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41650

FILED

DEC 23 2003

ORDER OF AFFIRMANCE

JANETTE M. BUCKER
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence (DUI). The district court sentenced appellant Hilario Torres-Arellano to serve a prison term of 12 to 30 months.

Torres-Arellano contends that the district court erred in using his prior misdemeanor DUI convictions to enhance the instant DUI conviction to a felony because they were constitutionally infirm. In particular, Torres-Arellano argues that his 1998 and 1999 misdemeanor DUI convictions were invalid because, prior to waiving his right to counsel and pleading guilty in those cases, Torres-Arellano was not advised about the dangers and disadvantages of self-representation. We conclude that Torres-Arellano's contention lacks merit.

In support of his contention, Torres-Arellano primarily relies upon U.S. v. Akins.¹ In Akins, the United States Court of Appeals for the Ninth Circuit concluded that an element of the crime of possession of a firearm after being convicted of domestic violence was proof of a prior

¹243 F.3d 1199 (9th Cir. 2001), opinion amended and superseded on denial of rehearing, 276 F.3d 1141 (9th Cir. 2002).

misdemeanor conviction for domestic violence.² 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.³ We conclude that Akins is inapplicable to the instant case because the prior misdemeanor DUI convictions were not an element of the charged crime, but instead were used to enhance his sentence. Further, we do not deem Akins persuasive.⁴

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 misdemeanor proceedings."⁵ With regard to an advisement about the waiver of the right to counsel, "[t]he same stringent standard does not apply to guilty pleas in misdemeanor cases" as applies in felony cases.⁶ 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

²Id. at 1202.

³Id. at 1202-03.

⁴See 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).

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

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

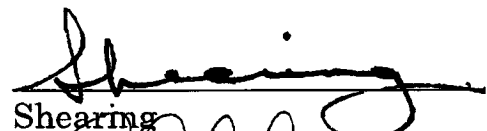
signed a form stating that he freely and intelligently waived his right to counsel.⁷

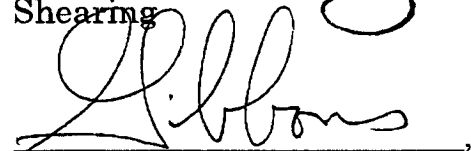
In the instant case, we conclude that the State has met its burden to show that the spirit of constitutional principles was respected. At the sentencing hearing, the State produced certified copies of the court records of the 1998 and 1999 DUI cases. Those records each included a waiver of rights form signed by Torres-Arellano, acknowledging that he understood the constitutional rights he was waiving by pleading guilty, including the right to be represented by an attorney. Additionally, the court records each included a document with an acknowledgement from the municipal court judge or justice of the peace that the judge had personally canvassed Torres-Arellano on his constitutional rights. Accordingly, the district court did not err in using the prior misdemeanor DUI convictions to enhance Torres-Arellano's sentence to a felony.

Having considered Torres-Arellano's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Becker

 _____, J.
Shearing

 _____, J.
Gibbons

⁷See *id.*

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk