

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN ADAM HUMPHREYS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41757

FILED

FEB 04 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of third-offense driving under the influence (DUI). The district court sentenced appellant to a prison term of 12-30 months and ordered him to pay a fine of \$2,000.00.

Appellant first contends that the district court erred in using a prior misdemeanor DUI conviction to enhance the instant DUI conviction to a felony because it was constitutionally infirm. In particular, appellant argues that his 1998 misdemeanor DUI conviction was invalid because the Sparks Municipal Court accepted his guilty plea without advising him about the dangers and disadvantages of self-representation. Appellant argues that the documents submitted by the State are insufficient to demonstrate that he knowingly or intelligently waived his right to counsel. We conclude that appellant's contention lacks merit.

In support of his contention, appellant primarily 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.¹ 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.² 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 his sentence. Further, we do not find Akins persuasive.³

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."⁴ 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

¹243 F.3d 1199, 1202 (9th Cir. 2001), opinion amended and superseded on denial of rehearing by 276 F.3d 1141 (9th Cir. 2002).

²Id. at 1202-03.

³See Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 748 P.2d 494 (1987) (noting that this court is not bound by decisions issued by the federal circuit court of appeals), aff'd Blanton v. City of North Las Vegas, 489 U.S. 538 (1989).

⁴Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

in felony cases.⁵ 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.⁶

In the instant case, we conclude that the State met its burden and demonstrated that the spirit of constitutional principles was respected. Appellant signed a waiver of rights form which contained acknowledgements that appellant understood the constitutional rights he was waiving by pleading guilty, including the right to counsel. The form was also signed by the municipal court judge, acknowledging that he informed appellant of his constitutional rights. Accordingly, we conclude that the district court did not err in using the 1998 conviction to enhance appellant's sentence in the instant case to a felony.

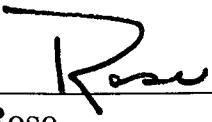
Appellant also contends that the 1998 conviction is insufficient because the conviction presented at sentencing did not match the prior offense alleged in the information. We disagree. The information alleged that appellant had previously been convicted "in May of 1998, for an offense which occurred in April of 1998, in Sparks Municipal Court." The copy of the conviction proffered at sentencing was dated May 21, 1998, for an offense committed on April 10, 1998. We conclude that appellant's contention is belied by the record.

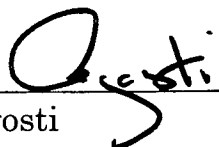
⁵Koenig v. State, 99 Nev. 780, 788-89, 672 P.2d 37, 42-43 (1983).

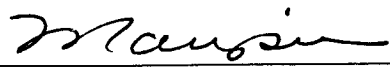
⁶See id.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Agosti


_____, J.
Maupin

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