

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT WILLIAM MCLEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42465

FILED

AUG 27 2004

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 jury verdict, of one count of driving under the influence with two or more convictions within the last seven years. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant to a prison term of 18 to 72 months.

Appellant contends that his December 9, 1999, conviction in Washington for being in physical control of a vehicle while under the influence should not have been admitted for purposes of enhancement of the instant offense. Specifically, appellant argues that: (1) his prior conviction cannot be used because he could not have been convicted in Nevada of being in physical control of the vehicle under the facts of the Washington conviction; and (2) he was not adequately canvassed by the Washington court prior to entering his guilty plea.

Appellant's first argument is without merit. Appellant pleaded guilty in Washington to being in physical control of a vehicle with a blood alcohol level of .08 or more. The conviction is for the "same or

similar" conduct to that prohibited by NRS 484.379(1).¹ We therefore conclude that the conviction was valid for enhancement purposes.²

Appellant's second argument is also without merit. To use a prior misdemeanor conviction for enhancement purposes, the State has the "burden of proving either that the defendant was represented by counsel or validly waived that right, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings."³ "[I]f the state produces a record of a judgment of conviction which shows that the defendant was represented by counsel, then it is presumed that the conviction is constitutionally adequate, *i.e.*, that the spirit of constitutional principles was respected."⁴ Once the State has demonstrated that the defendant was represented by counsel, the burden is on the defendant to present evidence to rebut the presumption that the conviction is constitutionally adequate.⁵

In this case, the record reflects that appellant was represented by counsel when he entered his guilty plea to the prior misdemeanor

¹See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (holding that California law that prohibits driving under the influence prohibits the "same or similar" conduct as NRS 484.379 pursuant to NRS 484.3792(8), even though the blood alcohol weight for offenses in California was 0.02 percent lower than in Nevada).

²See NRS 484.3792(8)(b)(3) (defining a prior offense as "[a] violation of a law of any other jurisdiction that prohibits the same or similar conduct" as that prohibited by NRS 484.379).

³Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

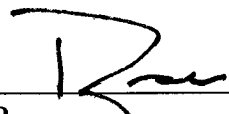
⁴Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996).


⁵Id.

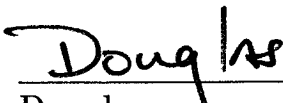
offense. Moreover, this court has recognized that the standards that apply to guilty pleas in felony cases (such as detailed oral plea canvasses) do not apply to guilty pleas in misdemeanor cases.⁶ We therefore conclude that appellant has failed to rebut the presumption that the prior conviction was constitutionally valid.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Connie J. Steinheimer, District Judge
James Andre Boles
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney

⁶Koenig v. State, 99 Nev. 780, 789, 672 P.2d 37, 43 (1983).