

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Table of Authorities	ii, iii
Jurisdictional Statement	1
Routing Statement	1
Statement of the Issues	1
Statement of the Case	1
Statement of the Facts	1,2
Standard of Review	2
Argument	2-6
Conclusion	6
Certificate of Compliance	7, 8
Certificate of Service	9

1 TABLE OF AUTHORITIES

2 Cases

3 *Davenport v. State*, 112 Nev. 475, 915 P.2d 878 (1996) 3, 5
4
5 *Dressier v. State*, 107 Nev. 686, 819 P.2d 1288 (1991) 3
6 *Hobbs v. State*, 127 Nev. 234, 251 P.3d 177 (2011) 3
7 *Koenig v. State*, 99 Nev. 780, 672 P.2d 37 (1983) 3, 5
8 *Picetti v. State*, 124 Nev. 782, 192 P.3d 704 (2008) 3, 4, 5
9 *Pettipas v. State*, 106 Nev. 377, 794 P.2d. 705 (1990) 4
10
11 *State v. Freese*, 116 Nev. 1097, 13 P.3d 442 (2000) 3

12 Statutes

13 18 U.S.C. §2243 2
14
15 NRS 239B.030 6
16 NRS 484C.110 1, 2, 6
17 NRS 484C.400 1, 6
18 5th Amendment to the U.S. Constitution 3
19 6th Amendment to the U.S. Constitution 3
20
21
22
23
24
25

1 County, Nevada Humboldt County, Nevada on April 29, 2014, and a second
2 subsequent conviction for *NRS 484C.110*, in case # 14 CR 00960, in the Union
3 Township Justice Court, Humboldt County, Nevada on December 10, 2019. (*See*
4 *Appellant's Appendix Pages 1-25*).¹ On February 8, 2022, the Appellant was sentenced to
5 serve a minimum term of twenty-four (24) months and a maximum term of seventy-
6 two (72) months in the Nevada Department of Corrections, with credit for twenty-
7 seven (27) days served and a fine of \$2,000. (*See Appellant's Appendix Pages 32-35*).

8 9 10 STANDARD OF REVIEW

11 The Respondent argues that the standard of review for Issue I is an abuse of
12 discretion standard.

13 ARGUMENT

14
15 ISSUE I: Appellant's Prior Misdemeanor convictions for Driving Under the
16 Influence of Alcohol in violation of *NRS 484C.110*, in case # 14 CR 00222 and in case
17 # 14 CR 00960, both in the Union Township Justice Court, Humboldt County,
18 Nevada, are Constitutionally Valid for Enhancement Purposes.

19
20 ¹ The time delay between the arrest in case # 14 CR 00960 on December 12, 2014,
21 and Appellant's subsequent conviction on December 10, 2019, resulted from
22 Appellant's supervision in an unrelated criminal case being revoked twice, initially on
23 January 13, 2015 for eighteen (18) months, and again on February 13, 2017, for
24 twenty-four (24) months, for a prior Federal conviction for Sexual Abuse of a Minor
25 in violation of *18 U.S.C. § 2243*, which Appellant was convicted for on April 18, 2011.
Appellant's criminal history information was before the District Court at sentencing in
this case through the Appellant's Presentence Sentencing Report prepared by the
State of Nevada. Department of Public Safety, Department of Parole and Probation.

1 In the present case, Appellant challenges both his prior convictions in case # 14
2 CR 00222 and in case # 14 CR 00960, both in the Union Township Justice Court,
3 Humboldt County, Nevada, as being Constitutionally infirm in violation of the 5th
4 Amendment and 6th Amendment to the U.S. Constitution. (See *Appellant's Opening Brief*
5 *page 4*).

7 In *Hobbs v. State*, 127 Nev. 234, 251 P.3d 177 (2011), this Court noted:

8 "If the State seeks to use prior misdemeanor convictions to enhance a
9 current offense to a felony, it must also make an affirmative showing of
10 the constitutional validity of the prior convictions. *Dressier v. State*, 107
11 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). This includes demonstrating
12 "either that counsel was present [during the prior misdemeanor
13 proceedings] or that the right to counsel was validly waived, and that the
14 spirit of constitutional principles was respected in the prior misdemeanor
15 proceedings." *Id.*" See *Hobbs v. State supra* 127 Nev. at 241, 251 P.3d at
16 181.

17 Three years earlier in *Picetti v. State*, 124 Nev. 782, 192 P.3d 704, 708 (2008), this
18 Court held in a similar vein that "in order to establish the validity of a prior
19 misdemeanor conviction offered for enhancement purposes, the State must
20 "affirmatively show either that counsel was present or that the right to counsel was
21 validly waived, and that the spirit of constitutional principles was respected." *Id.* See
22 also *Davenport v State*, 112 Nev. 475, 915 P.2d 878 (1996). In *Picetti*, this Court noted:

23 "Instead, we reaffirm our view that each case must be examined under
24 the totality of the facts and circumstances of that particular case.
25 Moreover, as this court concluded in *Koenig v. State*, "the realities of the
typical environment of such prosecutions in these courts of limited
jurisdiction cannot be ignored" and "the convenience of the parties and
the court should be given considerable weight."

1 *Picetti v. State*, 124 Nev. 782, 192 P.3d 704, 708, 709(2008).²

2 Moreover, this Court has consistently required that the State initially shoulder
3 this burden under *Picetti v. State, supra*, when relying on a prior misdemeanor for
4 enhancement purposes, *citing Koenig v. State*, 99 Nev. 780, 672 P.2d 37 (1983) and
5 *Pettipas v. State*, 106 Nev. 377, 794 P.2d. 705 (1990).
6

7 In the present case, after the Appellant objected to the admissibility of both his
8 convictions for case # 14 CR 00222, and in case # 14 CR 00960, before the Union
9 Township Justice Court, Humboldt County, Nevada, as the Appellant was not
10 represented by counsel during these two prior proceedings, the District Court
11 reviewed both of the Appellant's convictions in careful detail, and found that "these
12 are valid convictions for "first and second DUI offenses". (*Emphasis original*). (*See*
13 *Appellant's Appendix Pages 41-45*).
14
15

16 Before the District Court noted that the Appellant's conviction in case # 14 CR
17 00222 was valid, the District Court found that the Justice Court documents in case
18 # 14 CR 00222, indicated that while the Appellant was self-represented, the
19 documents clearly showed the entry of his plea of no contest; the violation in which
20 Appellant was being convicted of; the sentence Appellant was to receive; that the
21
22

23 ² See *Koenig v. State*, 99 Nev. 780, 672 P.2d 37 (1983) and *State v. Freese*, 116 Nev. 1097,
24 1104, 13 P.3d 442, 447 (2000) where this Court previously noted that the "[t]he
25 totality of the circumstances test has been the standard for reviewing the validity of
guilty pleas for some years."

1 Appellant understood and agreed to the conditions of his sentence; that he waived his
2 right to be represented by counsel; that there was a reference to his Constitutional
3 Right to be represented by an attorney at all stages of these proceedings; that if he
4 could not afford an attorney, one would be appointed to represent him at no cost; and
5 that the Appellant had initialed this particular paragraph, as well as having done so on
6 two similar paragraphs in the Justice Court documentation for case # 14 CR 00222.
7
8 (*See Appellant's Appendix Pages 1-9; 41-45*).

9
10 As to case # 14 CR 00960, the District Court also found that this conviction
11 was also valid for enhancement purposes in this case. (*See Appellant's Appendix Page*
12 *45*). Specifically, as to the Justice Court documentation in case # 14 CR 00960 before
13 the District Court, the District Court noted that one document is signed indicating
14 that the Appellant understood his sentence; agreed to the sentence he received; that
15 he initialed on the arrangement paperwork that he was entitled to an attorney and that
16 he waived the right to an attorney; that he waived his right a second time to be
17 represented by counsel, which he also initialed and signed; and that there was a DUI
18 admonishment of rights form which Appellant had initialed and signed. (*See*
19 *Appellant's Appendix Pages 10-21; 41-45*).

20
21
22 In summary, based on the totality of the facts and circumstances in this case,
23 and the realities of the typical environment of misdemeanor DUI prosecutions in the
24 limited jurisdiction of Justice Courts in Nevada, and based on the record below,
25 Respondent has affirmatively shown that the right to counsel was voluntarily waived

1 by Appellant in both of his convictions and that the spirit of constitutional principles
2 were fully respected, as noted under *Picetti, supra, Davenport, supra* and *Koenig, supra*, as
3 shown by the Justice Court documentation in both case # 14 CR 00222, and in case
4 # 14 CR 00960, before the Union Township Justice Court, Humboldt County,
5 Nevada. As a result, the District Court did not abuse its discretion by allowing these
6 two particular convictions, as described above, to be used in the present case to
7 enhance the Appellant's conviction for a violation of Driving Under the Influence of
8 an Intoxicating Liquor in violation of *NRS 484C.110* and *NRS 484C.400*.

11 CONCLUSION

12 Based on the arguments above, the State of Nevada respectfully asks this Court
13 to affirm the sentence imposed in this case.

14 Furthermore, pursuant to *NRS 239B.030*, the undersigned hereby affirms this
15 document does not contain the social security number of any person.

17 Dated this the 31st day of May, 2022.

18 MICHAEL MACDONALD
19 Humboldt County District Attorney

20
21 By Anthony R. Gordon
22 ANTHONY R. GORDON
23 Nevada State Bar No. 2278
24 Deputy District Attorney
25 P.O. Box 909
Winnemucca, Nevada 89446
(775) 623-6360

1 the Nevada Rules of Appellate Procedure.

2 Dated this the 31st day of May, 2022.

3 MICHAEL MACDONALD
4 Humboldt County District Attorney

5
6 By Anthony R. Gordon
7 ANTHONY R. GORDON
8 Nevada State Bar No. 2278
9 Deputy District Attorney
10 P.O. Box 909
11 Winnemucca, Nevada 89446
12 (775) 623-6360
13
14
15
16
17
18
19
20
21
22
23
24
25

