

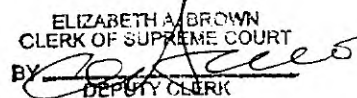
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY JAY TOM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84287-COA

FILED

SEP 14 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Larry Jay Tom appeals from a judgment of conviction entered pursuant to a no contest plea of felony driving under the influence (DUI). Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Tom argues the district court erroneously enhanced his DUI offense to a felony. Tom asserts the State failed to prove the constitutional validity of his prior DUI convictions because he was not represented by counsel during the proceedings for his misdemeanor convictions and the records for both cases do not demonstrate that Tom validly waived his right to counsel.

“If the State seeks to use prior misdemeanor convictions to enhance a current offense to a felony, it must also make an affirmative showing of the constitutional validity of the prior convictions.” *Hobbs v. State*, 127 Nev. 234, 241, 251 P.3d 177, 181 (2011). “This includes demonstrating ‘either that counsel was present [during the prior


misdemeanor proceedings] or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings.” *Id.* (alteration in original) (quoting *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991)); see *Koenig v. State*, 99 Nev. 780, 789, 672 P.2d 37, 43 (1983) (requiring only “that the spirit of constitutional principles is respected”).¹

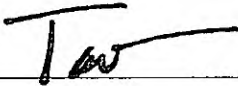
The district court reviewed the documents submitted by the State. The district court concluded that the documents demonstrated that the right to counsel was explained to Tom in both cases and that Tom validly waived his right to counsel in both cases by initialing on the documents that he wished to waive his right to counsel. The district court therefore concluded that constitutional principles were respected regarding Tom’s prior DUI convictions. Because the record before the district court

¹Tom appears to urge this court to overrule *Koenig* and require that the record concerning a prior misdemeanor conviction contain a canvass of the defendant’s right to self-representation in order for the prior conviction to be utilized for enhancement purposes in a later criminal prosecution. However, this court cannot overrule Nevada Supreme Court precedent. See *People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), as modified (Aug. 15, 2007) (“The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court.” (quotation marks and internal punctuation omitted)); see also *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing *stare decisis* “applies *a fortiori* to enjoin lower courts to follow the decision of a higher court”).

demonstrated Tom waived his right to counsel and the spirit of constitutional principles was respected in Tom's misdemeanor DUI proceedings, we affirm the decision of the district court. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk