STATE V. SEDILLO, 2001-NMCA-001, 130 N.M. 98, 18 P.3d 1051

STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
PHILLIP SEDILLO, Defendant-Appellant.

Docket No. 20,398

COURT OF APPEALS OF NEW MEXICO

2001-NMCA-001, 130 N.M. 98, 18 P.3d 1051

November 15, 2000, Filed

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY. ROSS C. SANCHEZ, District Judge.

Certiorari Granted, No. 26,688, January 9, 2001. Released for Publication January 22, 2001.

COUNSEL

PATRICIA A. MADRID, Attorney General, ANITA CARLSON, Ass't Attorney General, Santa Fe, New Mexico for Appellee.

PHYLLIS H. SUBIN, Chief Public Defender, CHRISTOPHER BULMAN, Appellate Defender, Santa Fe, New Mexico, for Appellant.

JUDGES

LYNN PICKARD, Chief Judge. WE CONCUR: M. CHRISTINA ARMIJO, Judge, JONATHAN B. SUTIN, Judge.

AUTHOR: LYNN PICKARD

OPINION

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PICKARD, Chief Judge.

{1} The practice of law in the metropolitan, municipal, and magistrate courts of this state is often conducted with a certain degree of informality. The question we address in this

case is whether an order in the form of a judge's handwritten notations is sufficient to prove prior convictions for driving while intoxicated (DWI). We hold that a fact finder is permitted, but not required, to find the fact of a prior conviction where, as here, the *{*1052} {*99}* prior conviction is proved by a judge's handwritten abbreviations on a complaint. A defendant is, of course, permitted to challenge the fact of such a conviction, but a fact finder does not have to accept the challenge and may find that the defendant's challenge creates a mere conflict in the evidence and therefore find that the conviction occurred. The fact finder may also rule in favor of a defendant's challenge and find that the conviction did not occur.

{2} Defendant was convicted of his fourth offense of DWI and sentenced under NMSA 1978, § 66-8-102(G) (1999) for a fourth degree felony. Defendant appeals the sentence, claiming that the State did not prove a prima facie case of one of Defendant's prior DWI convictions. Defendant claims that this is his third DWI conviction and therefore a misdemeanor for sentencing purposes. We affirm the judgment and sentence of the trial court.

FACTS AND PROCEDURAL HISTORY

{3} In a plea agreement filed March 24, 1999, Defendant pleaded guilty to DWI contrary to Section 66-8-102, admitted to two prior DWI convictions, and agreed to the mandatory minimum sentencing requirement. Defendant also reserved his right to appeal the trial court's ruling that a fourth DWI conviction, Docket No. CR 15040-87, dated November 10, 1987, was valid for the purpose of sentence enhancement.

{4} At the hearing on Defendant's motion for an offer of proof of prior convictions, the trial court determined that the State's evidence was adequate to prove the 1987 conviction. The State presented three documents, the fronts of which are reproduced at the end of this opinion: a complaint filed with the metropolitan court that included a handwritten notation of a guilty plea with a judge's signature; a waiver of counsel form signed by the same judge and by Defendant; and a computer printout from the metropolitan court indicating a plea of guilty to "DWI FIRST OFFENSE." The complaint and the waiver were both certified on the back sides of the pages by the metropolitan court clerk on November 22, 1995, shortly after the commission of the second DWI offense to which Defendant admitted. The printout was certified by the metropolitan court clerk on March 12, 1999, in apparent anticipation of the proceedings in this case. At issue in this appeal is the adequacy of these documents to prove a conviction for sentence enhancement purposes.

STANDARD OF PROOF AND REVIEW

{5} The fourth degree felony designation is intended only to enhance punishment for repeat DWI offenders. **See State v. Anaya**, 1997-NMSC-10, PP11-14, 123 N.M. 14, 933 P.2d 223. Proof beyond a reasonable doubt of the prior DWI convictions is not needed. **See id.** ; **see also State v. Smith**, 2000-NMSC-5, P8, 128 N.M. 588, 995 P.2d 1030 (holding that, for the purposes of the habitual offender statute, the State must

prove a prior conviction by a preponderance of evidence). The State bears the initial burden of establishing a prima facie case of a defendant's previous convictions. **See State v. Duncan**, 117 N.M. 407, 412, 872 P.2d 380, 385 . The defendant is then entitled to bring forth contrary evidence. **See id.** However, the State bears the ultimate burden of persuasion on the validity of prior convictions. **See State v. O'Neil**, 91 N.M. 727, 729, 580 P.2d 495, 497 (Ct. App. 1978).

{6} In determining whether the evidence supports a criminal charge, this Court views the evidence in the light most favorable to the State. **See State v. Howard**, 108 N.M. 560, 560-61, 775 P.2d 762, 762-63 . This Court does not weigh the evidence and may not substitute its judgment for that of the trial court. **See id.** at 561, 775 P.2d at 763.

DISCUSSION

{7} Defendant argues that the State did not meet its initial burden of proving its prima facie case because the waiver of counsel and the judgment of the DWI offense in 1987 were not properly filed. **See** Rule 7-701 NMRA 2000. The complaint form is file-stamped, signed, and dated by the clerk of the metropolitan court on October 30, 1987. The apparent guilty plea is handwritten on the complaint, dated November 10, 1987, and signed by Judge Barnhart. The waiver of *{*100}* counsel is signed by Defendant and also dated November 10, 1987, and signed by Judge Barnhart, but bears no file-stamp. Defendant contends that the lack of a second file-stamped date made after the guilty plea was written onto the complaint and after the waiver of counsel was signed renders this conviction invalid for the purpose of enhancing his sentence. Defendant further argues that, even if a guilty plea was correctly taken, there is no evidence regarding the charge to which Defendant pleaded guilty. We disagree.

{8} On the reverse sides of both the complaint and the waiver of counsel forms is a certification by the clerk of the metropolitan court dated November 22, 1995. Extrinsic evidence of authenticity is not required for a copy of an official record that is certified to be correct by the appropriate custodian. **See** Rule 11-902(D) NMRA 2000; **see also Duncan**, 117 N.M. at 412, 872 P.2d at 385 (finding that certified copies of prior guilty pleas were sufficient proof of convictions for the purpose of habitual offender enhancement); **cf**. **State v. Dawson**, 91 N.M. 70, 71-72, 570 P.2d 608, 609-10 (recognizing that properly authenticated court records are reliable). The court certifications on the complaint and the waiver of counsel forms ensure that the information in the documents, including the judge's notations and signature, is authentic and trustworthy. **See** Rule 11-902(D). The metropolitan court printout confirms that Defendant pleaded guilty to "DWI FIRST OFFENSE" and was sentenced to DWI school and assessed a total of $ 105 in fees. Defendant argues that the printout is merely a clerk's interpretation and is only derivative evidence. However, our rule confirms that a writing authorized by law to be recorded that is in fact recorded in a public office, including data compilation from the public office where items of that nature are kept, meets the requirements of authentication. **See** Rule 11-901(B)(7) NMRA 2000. Regardless of who keyed the information into the computer or when it was done, metropolitan court certification again ensures this document's trustworthiness. We also

note that all three documents in question are consistent in that they all include Defendant's name, the date of the plea (November 10, 1987), and the correct docket number (CR 15040-87). The lack of a file-stamp on a certified document adjudging guilt does not negate, as a matter of law, the rest of the evidence tending to prove Defendant's prior DWI conviction in 1987.

{9} Finally, Section 66-8-102(M)(2) states that "'conviction' means an adjudication of guilt and does not include imposition of a sentence." This definition is a codification of the rule applicable to habitual offender cases that conviction means the establishment of guilt by plea or finding and does not include the imposition of sentence. **See State v. Larranaga**, 77 N.M. 528, 529, 424 P.2d 804, 805 (1967); **see also State v. Castillo**, 105 N.M. 623, 624, 735 P.2d 540, 541 (holding that a guilty plea, even though not reduced to a written judgment and sentence, could be used to enhance a subsequent offense). Thus, there does not need to be a filed and stamped judgment and sentence. The trial court stated that he had served in the metropolitan court with Judge Barnhart and was familiar with the notations of the court. He determined that the notations indicated that Defendant pleaded guilty. Furthermore, the notations on the complaint read that the Defendant pleaded guilty to a first DWI and the signature appears to be that of Judge Barnhart. The certified computer printout from the metropolitan court also notes that the Defendant pleaded and was judged guilty of DWI, first offense. The evidence therefore indicates an adjudication of guilt resulting in a conviction as defined by Section 66-8-102(M)(2).

CONCLUSION

{10} Three court-certified documents all indicating that Defendant pleaded guilty and was convicted of a first DWI offense before Judge Barnhart on November 10, 1987, permitted the trial court as fact finder to determine it more probable than not that Defendant was convicted of that offense. For the reasons stated above, we conclude that the trial court could have found, by a preponderance of the evidence, that Defendant was convicted of DWI (first offense) on November *{*101}* 10, 1987. We affirm the conviction and sentence imposed by the trial court.

{11} IT IS SO ORDERED.

LYNN PICKARD, Chief Judge

WE CONCUR:

M. CHRISTINA ARMIJO, Judge

JONATHAN B. SUTIN, Judge

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