

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL EUGENE BAAR,

Defendant-Appellant.

UNPUBLISHED

November 14, 1997

No. 192466

Kent Circuit Court

LC No. 95-000614 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant was convicted of operating a motor vehicle with an unlawful blood alcohol level, third offense, MCL 257.625(2) and (6); MSA 9.2325(2) and (6), and sentenced to forty-eight months probation. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erroneously considered his 1985 misdemeanor conviction for operating a vehicle under the influence of intoxicants secured in the State of Virginia to elevate his instant UBAL conviction to a felony because the Virginia conviction was secured without counsel or a waiver thereof. Defendant asserts that because the prior conviction was uncounseled, the conviction is constitutionally infirm. We disagree.

Where no sentence of imprisonment is ultimately imposed, a defendant charged with a misdemeanor is not entitled to representation by counsel. *Nichols v United States*, 511 US ____; 114 S Ct 1921; 128 L Ed 2d 745 (1994); *People v Richert (After Remand)*, 216 Mich App 186, 192-194; 548 NW2d 924 (1996). As a consequence, an uncounseled misdemeanor conviction that did not result in the actual imposition of imprisonment is not constitutionally infirm and may be relied upon to elevate a subsequent conviction for UBAL to a felony.

In the instant case, defendant received a ten-day suspended sentence as a result of his 1985 Virginia misdemeanor conviction. Because no incarceration was ultimately imposed as a result of that

* Circuit judge, sitting on the Court of Appeals by assignment.

conviction, defendant was not entitled to counsel. Accordingly, the prior uncounseled conviction is not constitutionally infirm. The trial court properly considered the conviction as an offense-enhancing element of UBAL.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood