

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY E. RUSE,

Defendant-Appellant.

UNPUBLISHED
December 9, 2004

No. 249144
Kent Circuit Court
LC No. 02-005871-FH

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction for OUIL, third offense. MCL 257.625. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant first argues that the trial court erred in denying his motion to quash the enhanced charge because a prior conviction was obtained in violation of his Sixth Amendment rights. This constitutes a collateral attack on defendant's prior conviction for driving while impaired. The sole claim that can be raised in a collateral attack on a predicate offense is that the prior conviction was obtained in violation of the Sixth Amendment right to counsel. *People v Carpentier*, 446 Mich 19, 29; 521 NW2d 195 (1994). Where the only real question presented in a collateral attack is whether the defendant intelligently waived the right to counsel, compliance with all the requirements of MCR 6.610 in taking the defendant's guilty plea is immaterial. *People v Asquini*, 227 Mich App 702, 711; 577 NW2d 142 (1998).

Defendant relies on the provisions of MCR 6.610(E) and asserts that the court rule requires that the waiver of counsel be explicitly obtained on the record. However, in light of *Asquini*, the provisions of the court rule are irrelevant. Here, defendant was provided with a written statement of his rights that informed him of his right to counsel. The court referred to this statement before accepting defendant's plea asked him if he understood those rights, and whether he intended to give up those rights in offering a plea of guilty. Defendant answered yes. The circuit court did not err in finding that defendant intelligently waived his right to counsel in the district court plea proceedings, even if the provisions of MCR 6.610 were not followed.

Defendant also asserts that the plea agreement in the prior case contractually barred the prosecution from using that offense to enhance a subsequent conviction. In *People v Haynes*, 256 Mich App 341; 664 NW2d 225 (2003), the Court held that the use of prior counseless

misdemeanor convictions to enhance a later sentence is constitutionally permissible if counsel was not required for the earlier conviction. The defendant was placed on constructive notice when the statute was amended that his prior conviction would subject him to enhanced punishment for any future OUIL convictions. *Id.*, 349. Statutes requiring harsher penalties for repeat offenders are not ex post facto laws because it is the later offense that is punished more harshly, not the prior offense. *Id.*, 350. There is no showing that defendant had a reasonable contract-based expectation that his driving while impaired convictions would have no effect on a sentence for a subsequent OUIL offense.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens