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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-956

ANTONIO DEWAYNE ROBERTSON APPELLANT	**Opinion Delivered** March 30, 2011 APPEAL FROM THE DREW COUNTY CIRCUIT COURT [NO. CR-2010-13-1]
V.	HONORABLE SAM POPE, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Antonio DeWayne Robertson appeals from his conviction of third-degree domestic battery, second offense, for which he was sentenced to six years in the Arkansas Department of Correction. Appellant contends that the trial court erred in the punishment phase of his trial by admitting into evidence proof that he had previously been convicted of third-degree domestic battery. We affirm.

Appellant was found guilty by a jury of third-degree domestic battery on evidence that he beat his former girlfriend, the mother of his two-year-old child, in December 2009. The offense is normally a Class A misdemeanor, punishable by up to one year in jail. However, when the offender has been convicted of committing a prior domestic battery within five years of the current battery, the offense is a Class D felony, punishable by up to six years in prison. Ark. Code Ann. § 5-26-305(b) (Supp. 2009). At the punishment phase of appellant's

trial, the State sought to enhance the classification of appellant's crime and his sentence by offering a certified record showing that he also had been convicted of committing an earlier domestic battery in April 2008. The State further presented the court with a certified copy of a written notice of the right to counsel and a waiver of counsel signed by appellant less than three weeks before his trial on the prior offense. The trial court admitted evidence of the prior conviction over appellant's objection that he was not represented by an attorney at the prior conviction and that no proof was offered to show that he had "knowingly and intelligently" waived his right to counsel. Appellant argues on appeal, as he did in the trial court, that evidence of his prior conviction was inadmissible in the absence of proof that he had been specifically warned by the trial judge of the dangers and disadvantages of self-representation before the earlier trial. We disagree.

It is true that, as a general rule, an accused may be allowed to proceed pro se if he first makes a voluntary, knowing, and intelligent waiver of his constitutional right to the assistance of counsel. *See Bledsoe v. State*, 337 Ark. 403, 989 S.W.2d 510 (1999). The constitutional minimum for determining whether a waiver was knowing and intelligent is that the accused be made sufficiently aware of his right to have counsel present and of the possible consequences of a decision to forego the aid of counsel. *Williams v. State*, 2009 Ark. App. 684. A specific warning of the dangers and disadvantages of self-representation, or a record showing that the defendant possessed such required knowledge from other sources, is required to establish the validity of a waiver. *Robinson v. State*, 2010 Ark. App. 430.

Appellant's reliance on *Bledsoe* and *Robinson* is misplaced. Those cases involved direct appeals from criminal convictions where the accused was unrepresented. Here, on the other hand, appellant is collaterally attacking a prior conviction that long ago became final. As the State argues, the general rule requiring proof of a warning about the dangers and disadvantages of self-representation is applicable to matters on direct appeal or to postconviction proceedings but does not apply to collateral proceedings. *King v. State*, 304 Ark. 592, 804 S.W.2d 360 (1991). "[W]hile the constitutionally protected right to counsel will not be presumed from a silent record, a record which states that a defendant waived his right to counsel, while not sufficient when arguing violation of the right, is sufficient for a prior sentence to be used for enhancement purposes." *Bradley v. State*, 320 Ark. 100, 109, 896 S.W.2d 425, 430 (1995); *see also King v. State*, *supra*; *Neble v. State*, 26 Ark. App. 163, 762 S.W.2d 393 (1988).

As stated above, the written and signed waiver-of-counsel form in the record shows that appellant was aware of his right to counsel and waived that right before the trial that resulted in his prior conviction. Accordingly, we find no reversible error in the trial court's decision to admit proof of the prior conviction for enhancement purposes.

Affirmed.

ABRAMSON and MARTIN, JJ., agree.