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**State, Dep't of Motor Vehicles v. Terracin, 125 Nev. Adv. Op. No. 4
(Jan. 29, 2009)¹**

AUTOMOBILES – SUSPENSION OR REVOCATION OF LICENSE

Summary

Appellant State of Nevada Department of Motor Vehicles (“DMV”) filed consolidated appeals from district court orders granting petitions for judicial review regarding the DMV’s acts of revoking the driving privileges of respondents Tracy Lynn Terracin and Matthew Casey following their convictions for driving under the influence (“DUI”).

Disposition/Outcome

Affirmed district court decisions to grant judicial review and reduce the suspension of respondents’ driving privileges from one year to ninety days.

Factual and Procedural History

In 2001, Terracin was convicted of DUI. Pursuant to NRS 483.360(1)(c), the DMV must suspend the driver’s license of an individual for ninety days if the conviction is the driver’s first DUI offense in seven years.² Consequently, the DMV suspended Terracin’s license for ninety days.

Shortly after the Nevada Legislature revised NRS 483.360(1),³ Terracin was once again convicted of DUI. However, Terracin was convicted as a first-time offender under NRS 484.3792(1)(a).⁴ The DMV then suspended Terracin’s license for one year under the theory that the amended NRS 483.460(1)(b)(5) required a one-year suspension following a second DUI conviction within a seven-year period.

Casey was convicted of DUI in 2004, resulting in suspension of his driver’s license for ninety days under the prior version of NRS 483.460(1)(c).⁵ Casey was once again convicted of DUI less than two years later. Although Casey was charged as a second-time DUI offender under NRS 484.3792(1)(b), he was ultimately convicted as a first-time offender under NRS 484.3792(1)(a).⁶ The DMV then suspended Casey’s driving privileges for one year under the

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² NEV. REV. STAT. § 483.460(1)(a) (2003) (amended 2005).

³ See NEV. REV. STAT. § 483.460(1) (2005).

⁴ See NEV. REV. STAT. § 484.3792(1)(a) (2005) (amended 2007).

⁵ See NEV. REV. STAT. § 483.460(1)(a) (2003) (amended 2005).

⁶ See NEV. REV. STAT. § 484.3792(1)(a)-(b).

amended version of NRS 483.460(1)(b)(5).⁷

The DMV affirmed its decisions after conducting administrative hearings for both respondents, upon which both Terracin and Casey filed petitions for judicial review with the Eighth Judicial District Court. The district court granted the petitions for review and, in accordance with the amended version of NRS 483.460(1)(c), reduced the suspensions to ninety days. These consolidated appeals followed.

Discussion

Statutory Construction

The court reviews issues of statutory construction de novo. As such, the court first reviews the statutory text to determine if its language is plain and unambiguous.⁸ Under the prior version of NRS 483.460, the Nevada Supreme Court held that an individual loses driving privileges for a specified time depending on how many DUI offenses the individual has committed within a 7-year period.⁹ Subsequently, the Nevada Legislature amended NRS 483.460 to predicate punishment on the statute under which an individual is convicted.¹⁰ Under the amended version of NRS 483.460(1)(c), the DMV must revoke a driver's license for ninety days if the driver is convicted as a first-time offender under NRS 484.3792(1)(a).¹¹

As both Terracin and Casey were convicted as first-time offenders under NRS 484.3792(1)(a) following their second DUI offenses, they were subject to the ninety-day revocation period as described under NRS 483.460(1)(c).¹² The DMV's action to suspend the respondents' licenses for one year was not appropriate under the amended version of NRS 483.460. Consequently, the district court's orders granting respondents' petitions for judicial review and reducing each suspension to ninety days are affirmed.

Conclusion

Under the amended version of NRS 483.460, the DMV shall revoke the driving privileges of an individual who is convicted of DUI.¹³ NRS 484.3792(1)(a), (b), and (c) are determinative of the revocation periods pronounced in NRS 483.460.¹⁴ Although respondents Terracin and Casey had each committed a prior DUI offense within a period of seven years

⁷ See NEV. REV. STAT. § 483.460(1)(b)(5) (2005).

⁸ Cirac v. Lander County, 95 Nev. 723, 729 (1979).

⁹ See Yohey v. State, Dep't of Motor Vehicles, 747 P.2d 238, 239 (Nev. 1987).

¹⁰ NEV. REV. STAT. § 483.460.

¹¹ *Id.* § 483.460(1)(a).

¹² *See id.* § 483.460(1)(c).

¹³ *See id.* § 483.460.

¹⁴ *See id.*

before their second convictions, both individuals were convicted as first-time offenders under NRS 484.3792(1)(a). NRS 483.460(1)(c) states that individuals convicted under NRS 484.3792(1)(a) are subject to a ninety-day suspension of driving privileges.¹⁵ Consequently, the district court's orders granting judicial review and reducing the respondents' suspension periods to ninety days are affirmed.

¹⁵ *See id.* § 483.460(1)(c).