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### Summary of Stromberg v. Dist. Ct., 125 Nev. Adv. Op. No. 1

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*Nevada Law Journal*

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***Stromberg v. Dist. Ct., 125 Nev. Adv. Op. No. 1 (Jan. 29, 2009)***<sup>1</sup>

**CRIMINAL LAW – DUI**

**Summary**

Original petition for a writ of mandamus challenging the district court’s decision to deny petitioner’s request to apply for treatment.

**Disposition/Outcome**

Petition granted. NRS 484.37941 allows third-time DUI offenders who enter a plea of guilty on or after July 1, 2007 to apply for treatment pursuant to the statute. Further, NRS 484.37941 does not violate the separation-of-powers doctrine. The clerk of the court is to issue a writ of mandamus instructing the district court to consider Stromberg’s request to plead guilty and apply for treatment.

**Factual and Procedural History**

On May 29, 2007, Stromberg was charged with his third count of driving under the influence (“DUI”) within a seven year period, a class B felony. On June 8, 2007, Stromberg entered a plea of not guilty in the district court and told the court that it was his intention to change his plea to guilty after July 1, 2007, so he would be eligible to participate in a three-year treatment program that would become effective on July 1, 2007.<sup>2</sup>

Stromberg returned to court on July 7, 2007 and changed his plea to guilty and applied for the treatment program. The State, however, opposed the plea change and argued that the statute did not apply retroactively to offenses that occurred before July 1, 2007. Stromberg argued the plain language of the statute applied retroactively to offenses committed before the statute went into effect. The district court ordered a briefing regarding NRS 484.37941.

The district court held a hearing on August 7, 2007, regarding Stromberg’s application for treatment. The district court determined that the statute’s language did not indicate clear legislative intent to apply the statute retroactively and denied Stromberg’s request. The district court granted a stay pending review of the Nevada Supreme Court’s review.

**Discussion**

**Retroactivity and NRS 484.37941**

Stromberg argued that the statute’s plain language applies to guilty pleas entered before or after July 1, 2007. The State argued that Stromberg is not entitled to treatment because the offense occurred before the effective date of the statute and in order for an offender to be eligible for treatment, the offense had to have occurred after the statute’s effective date.

The Court held in a previous case that the plain language of NRS 484.37941 indicates the Legislature’s intent to apply the statute to all offenders pleading guilty on or after July 1, 2007.<sup>3</sup>

<sup>1</sup> By Brandon Johansson.

<sup>2</sup> See 2007 NEV. STAT., CH. 288 § 6, at 1064; NEV. REV. STAT. § 484.37941 (2007).

<sup>3</sup> Picetti v. State, 124 Nev. \_\_\_, 192 P.3d 704, 711 (2008).

The Court specifically stated in *Picetti* that, “anyone entering a plea of guilty or nolo contendere after the statute’s effective date is eligible to apply for treatment.”<sup>4</sup> Based on the Court’s affirmation of the *Picetti* decision, the Court determined that the district court abused its discretion when it refused to allow Stromberg to apply for treatment.

### NRS 484.37941 and the Separation-of-Powers Doctrine

The State argued that NRS 484.37941 violates the separation-of-powers doctrine because it gives the district court the power to determine how to charge a DUI offender when that is a power of the executive branch of government through the prosecutor. The Court found that NRS 484.3791 does not violate the separation-of-powers doctrine. The Court used two California Supreme Court cases where the state made similar arguments as in the present case to illustrate the line between the prosecutor’s decision in how to charge and prosecute and the court’s authority to dispose of a case once a case is its jurisdiction.<sup>5</sup>

The Court found the California cases’ reasoning persuasive for two reasons. First, the district court’s decision to grant or deny an offender’s application for treatment under NRS 484.37941 follows the prosecutor’s decision to charge an offender for a third DUI offense. After the charging decision has been made, the only exercise of discretion allowed is between the legislative prescribed penalties. The Court concluded that a district court’s decision to allow an offender to enter a treatment program is analogous to sentencing an offender to probation; therefore, the decision would fit under the purview of the district court.<sup>6</sup>

Second, the Court found that NRS 484.37941 does not limit the prosecutor’s discretion to determine whether to charge a third-time DUI offender with a lesser offense. This is important because a second-time DUI offender who completes the treatment program can nevertheless be treated as a third-time DUI offender for the purpose of enhancement if the offender is convicted of another DUI.<sup>7</sup>

### Conclusion

The Nevada Supreme Court concluded that the plain language of NRS 484.37941 allows third-time DUI offenders who entered guilty pleas on or after July 1, 2007 to apply for treatment. The Court also concluded that NRS 484.3791 does not violate the separation-of-powers doctrine. The Court granted the petition and ordered the clerk of the court to issue a writ of mandamus instructing the district court to consider Stromberg’s plea of guilty and application to apply for treatment pursuant to NRS 484.3791.

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<sup>4</sup> *Id.* at 712.

<sup>5</sup> See *Esteybar v. Municipal Court for Long Beach Judicial Dist.*, 485 P.2d 1140 (Cal. 1971); *People v. Superior Court of San Mateo County*, 520 P.2d 405 (Cal. 1974).

<sup>6</sup> See NEV. REV. STAT. § 176A.100 (2007).

<sup>7</sup> See NEV. REV. STAT. § 484.3792(2) (2007).