IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY,
Appellant,
vs.
RICHARD SCOTT HILL,
Respondent.

No. 51477

FILED

FEB 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a petition for judicial review. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge.

In June 2006, respondent Richard Scott Hill was convicted as a first-time offender for driving under the influence of intoxicating liquor (DUI) in violation of NRS 484.379. In August 2007, Hill was again convicted of DUI. Despite the previous DUI conviction, Hill's second conviction was also for a first offense. Shortly after the 2007 DUI conviction, appellant State of Nevada Department of Motor Vehicles and Public Safety (DMV) notified Hill in writing that, pursuant to NRS 483.460, his driving privileges were being revoked for one year because he had been convicted of two DUI violations within seven years. Hill requested an administrative hearing regarding the revocation of his driver's license and an administrative law judge upheld the one-year revocation. Hill then filed a petition for judicial review in the district court. The district court vacated the administrative decision, concluding that the DMV could only revoke Hill's license for 90 days under NRS 483.460(1)(c) because Hill was only convicted as a first-time offender for

this second offense. The DMV has timely appealed the district court's order.

On appeal, the DMV argues that, notwithstanding the 2005 legislative amendments to NRS 483.460, a conviction for a second DUI offense within a seven-year period triggers a mandatory one-year revocation of the offender's driver's license. Additionally, the DMV argues that the district court should not have considered Hill's argument that the recent amendments to NRS 483.460 changed the way the DMV must calculate the length of a revocation because Hill failed to present this argument to the administrative law judge.

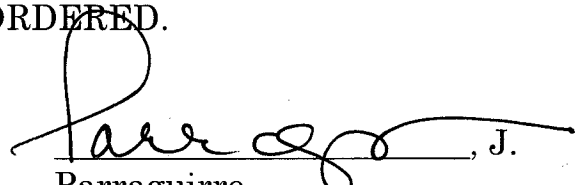
We first address the DMV's argument that Hill failed to preserve this statutory interpretation issue for the district court's review by bringing the argument before the administrative law judge. Having reviewed the transcript of the administrative proceedings, it appears that Hill sufficiently raised the substance of these arguments during the administrative hearing. Accordingly, we conclude that this argument lacks merit.

Consequently, we now address the DMV's argument regarding the interpretation of NRS 483.460. NRS 483.460(1) places a mandatory duty on the DMV to revoke an individual's driving privileges for a specified period of time upon receipt of a record of conviction for DUI. NRS 484.3792 sets forth an escalating penalty scheme for repeat DUI offenders. In State of Nevada Department of Motor Vehicles v. Terracin, 125 Nev. ___, ___ P.3d ___ (Adv. Op. No. 4, January 29, 2009), we recently held that, due to the 2005 amendments, the plain language of NRS 483.460(1) now mandates that the length of the period of license revocation depends on the level of punishment prescribed by NRS

484.3792, rather than the number of DUI convictions within a seven-year period. Accordingly, under the revised version of NRS 483.460(1), the DMV must revoke an individual's driver's license for 90 days if the driver is convicted of an offense punishable as a first-time offense under NRS 484.3792(1)(a). Terracin, 125 Nev. at ___, ___ P.3d at ___. A one-year revocation is mandated if the driver is convicted of an offense punishable as a second-time offense under NRS 484.3792(1)(b). Terracin, 125 Nev. at ___, ___ P.3d at ___. Thus, while an individual may be convicted of two DUI offenses within a seven-year period, if the individual is convicted as a first-time DUI offender under NRS 484.3792(1)(a) for the second DUI offense, the DMV may only suspend the offender's license for 90 days. Terracin, 125 Nev. at ___, ___ P.3d at ___.

Here, despite Hill's 2007 conviction being his second within a seven-year period, he was nevertheless convicted as a first-time offender for the 2007 incident pursuant to NRS 484.3792(1)(a). The district court, therefore, correctly interpreted NRS 483.460(1) as mandating that Hill's driver's license be suspended for 90 days rather than one year. Accordingly, we conclude that the district court order granting respondent's petition for judicial review should be affirmed.

It is so ORDERED.



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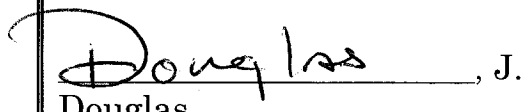
Parraguirre



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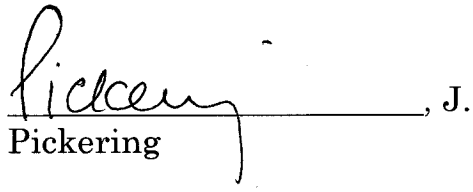

_____, J.
Pickering

cc: Hon. Michael P. Gibbons, District Judge
Attorney General Catherine Cortez Masto/DMV/Carson City
William B. Cole Jr.
Douglas County Clerk