IN THE SUPREME COURT OF THE STATE OF NEVADA

BOBBI JO TATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51271

FILED

MAY 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one felony count of driving under the influence with one or more prior felony DUI convictions. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Bobbi Jo Tate to serve a prison term of 35-88 months and ordered her to pay a fine of $2,000.

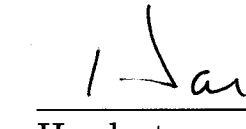
Tate contends that the district court erred by determining that her 1998 conviction in Iowa for felony vehicular homicide was substantially similar to conduct proscribed by NRS 484.3795 (felony DUI causing death) and thus sufficient to enhance the instant offense to a felony pursuant to NRS 484.3792(2)(b) and (d). See Iowa Code Ann. § 707.6A (West 1997); see also NRS 484.379(1). Pursuant to the guilty plea agreement, Tate expressly reserved the right to raise this issue on appeal. See NRS 174.035(3). We disagree with Tate's contention.

We conclude that the vehicular homicide statute in Iowa, violated by Tate in 1997, prohibited "same or similar conduct" to that prohibited by NRS 484.3795. Cf. Blume v. State, 112 Nev. 472, 475, 915

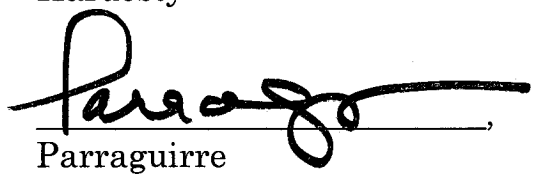
P.2d 282, 284 (1996) (holding that California law prohibiting driving under the influence prohibits the "same or similar" conduct as NRS 484.379 pursuant to former NRS 484.3792(8), even though the blood alcohol weight for offenses in California is 0.02 percent lower than in Nevada); Marciniak v. State, 112 Nev. 242, 243-44, 911 P.2d 1197, 1198 (1996) (holding that Michigan law prohibiting driving while visibly impaired due to the consumption of alcohol prohibits "same or similar" conduct under former NRS 484.3792(8)). We have stated that the conduct prohibited need not be identically described to fall within the "same or similar conduct" envisioned by NRS 484.4792(2)(d). See Marciniak, 112 Nev. at 243, 911 P.2d at 1198; see also Jones v. State, 105 Nev. 124, 126-27, 771 P.2d 154, 155 (1989) (noting that the phrase "'same conduct' as used in [former] NRS 484.3792(7) refers to the conduct of driving under the influence whether or not the particulars are identical") (emphasis added). Considering the documents submitted detailing the circumstances surrounding Tate's conviction in Iowa, we conclude that the conviction involved conduct similar to that proscribed by NRS 484.3795—while operating a vehicle under the influence of alcohol, Tate caused the death of another. See Jones, 105 Nev. at 126, 771 P.2d at 155 (where, as here, "the documents respecting appellant's prior . . . DUI conviction[ ] clearly reveal[s] that the offense[ ]," if committed in Nevada, would be a violation of NRS 484.3795, then the prior conviction can be used for enhancement purposes). Therefore, we further conclude that the district court did not err by allowing the State to use Tate's 1998 felony conviction in Iowa to enhance the instant DUI offense to a felony.

Having considered Tate's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Hardesty



_____, J.
Parraguirre

_____, J.
Pickering

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk