

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON BURK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52331

FILED

JAN 07 2010

TRACIE K. LINDENMAN
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 driving under the influence causing death and/or substantial bodily harm. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Brandon Burk contends that the State was precluded from proceeding on the pending indictment after the criminal complaint was dismissed.¹ This contention is foreclosed by our recent decision in Thompson v. State, ___ Nev. ___, ___ P.3d ___ (Adv. Op. No. 59, December 10, 2009, at 7-8), wherein we held that NRS 178.562(1) does not preclude the State from proceeding “on one of two pending proceedings

¹The parties agree that this issue was properly preserved by entry of a conditional guilty plea. See NRS 174.035(3). Therefore, we address the merits of this issue.

and dismiss[ing] the proceeding under which it has elected not to prosecute.” Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Ciciliano & Associates, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk