


IN THE SUPREME COURT OF THE STATE OF NEVADA

BETH ANN MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52375

FILED

MAR 10 2010

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER VACATING SENTENCE AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor, third offense. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

Appellant Beth Ann Martin asserts that the district court erred by refusing to permit her to apply to and be considered for the DUI offender diversion program set forth in NRS 484.37941. Respondent concedes that, in light of the plea negotiations and this court's holdings in Savage v. Dist. Ct., 125 Nev. ___, 200 P.3d 77 (2009) and Stromberg v. Dist. Ct., 125 Nev. ___, 200 P.3d 509 (2009), the district court erred by refusing to acknowledge the diversion program and by not permitting Martin to apply for treatment. Respondent does not oppose a remand for a new sentencing hearing. We conclude that the district court abused its discretion by refusing to allow Martin to apply to and be considered for the diversion program. Accordingly, we

VACATE the sentence imposed AND REMAND this matter to the district court for a new sentencing hearing at which Martin shall be

permitted to apply to and be considered for treatment pursuant to NRS
484.37941.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Third Judicial District Court Dept. 3, District Judge
Law Office of Kenneth V. Ward/Fernley
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk