

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAX A. THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34841

FILED

MAR 01 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of driving under the influence with two or more prior convictions. The district court sentenced appellant to serve fifteen to forty-eight months in the Nevada State Prison, with credit for one hundred fifty-eight days served.

Appellant contends the district court erred in denying his motion to dismiss the information. Appellant asserts the information was filed twenty-four days after the preliminary hearing, which was nine days too late. Appellant contends dismissal is warranted due to the delay.¹ We disagree and conclude the district court properly denied appellant's motion to dismiss.

An information must be filed within fifteen days of the preliminary hearing. NRS 173.035(3). The court may dismiss the charges if no information is filed within the time allotted by NRS 173.035(3). See NRS 178.556(1).

¹At his arraignment in the district court, appellant moved the district court to dismiss the charge. From a review of the record, it does not appear the district court specifically ruled on appellant's motion. However, we presume the motion was denied because the court thereafter accepted appellant's plea of guilty. We further note that appellant
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Appellant was arrested on July 3, 1998, on suspicion of driving while intoxicated. The justice court held the preliminary hearing on April 27, 1999, and bound appellant over for trial in the district court on the charge of driving while under the influence, in violation of NRS 484.379(1)(a), with two or more prior convictions, a felony pursuant to NRS 484.3792(1)(c). The justice court apparently declined to bind appellant over, however, on the charge he was driving with .10 percent or more by weight of alcohol in his blood, in violation of NRS 484.3279(1)(c).²

The State filed a motion for leave to file an information by affidavit in the district court on April 30, 1999. The State's motion was heard on May 20, 1999. The district court denied the State's motion. The very next day, May 21, 1999, the State filed a criminal information comporting to the justice court's initial finding of probable cause. Appellant was arraigned in the district court on the driving under the influence charge on May 26, 1999.

Even assuming that the State failed to establish good cause for the delay in filing the information, appellant must show some oppression or prejudice resulting from the untimely filing of the information in order to compel dismissal of the charge against him. *Thompson v. State*, 86 Nev. 682, 683, 475 P.2d 96, 97 (1970). In *Thompson*, we held that a nine-day delay by the State in filing charges after a

. . . continued

specifically reserved the right to appeal this issue in the written plea agreement.

²It appears there was a problem with the laboratory results as well as bringing the technician to testify at the preliminary hearing. Therefore, the justice court bound appellant over for trial only on the driving under the influence charge in violation of NRS 484.379(1)(a).

preliminary hearing, absent a showing of oppression or prejudice by defendant, did not warrant dismissal of the charges. Id. Appellant, in this matter, fails to demonstrate any oppression or prejudice resulting from the nine-day delay. Therefore, we conclude the district court properly denied appellant's motion to dismiss.

Having considered appellant's contention, and having concluded it is without merit, we

ORDER this appeal dismissed.

Maupin J.
Maupin

Shearing J.
Shearing

Becker J.
Becker

cc: Hon. Jack B. Ames, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk