

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACEY A. SEAY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DONALD M. MOSLEY, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 58021

FILED

MAY 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION


In this original petition for a writ of habeas corpus, petitioner Tracey Seay challenges an order of the district court allowing the State to proceed in prosecuting Seay for felony DUI.

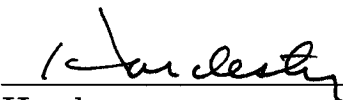
Seay was arrested after being involved in a hit-and-run accident. He was suspected of driving while intoxicated and the City of Las Vegas filed a complaint in municipal court charging Seay with misdemeanor DUI. The State then filed a complaint in justice court that listed one prior DUI conviction and charged Seay with felony DUI arising out of the same accident. Subsequently, Seay pleaded guilty to the misdemeanor complaint and then filed a motion in justice court to dismiss the felony complaint on double jeopardy grounds. That motion was denied, Seay filed an appeal in district court, the appeal was dismissed, and this original petition followed.

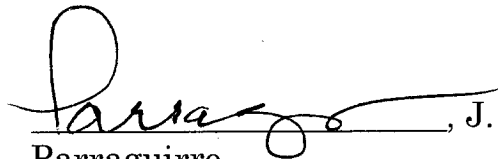
While a conviction for misdemeanor DUI may be redundant to a conviction for felony DUI, see State of Nevada v. Dist. Ct., 116 Nev. 127, 138, 994 P.2d 692, 699 (2000); Dossey v. State, 114 Nev. 904, 908-09, 964 P.2d 782, 784 (1998); Albitre v. State, 103 Nev. 281, 284, 738 P.2d 1307, 1309 (1987), Seay has not yet been convicted of felony DUI and the State is permitted to seek a conviction on the greater charge before disposing of any resulting redundancy issue, see Ohio v. Johnson, 467 U.S. 493, 499-500 (1984). We therefore conclude that this court's intervention by way of a writ of habeas corpus is not warranted.

Accordingly, we

ORDER the petition DENIED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Louis C. Schneider, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk