

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN EDWARD BECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35407

FILED

JUL 24 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 felony driving under the influence in violation of NRS 484.379(1) and NRS 484.3792. The district court sentenced appellant to 12 to 30 months in the Nevada State Prison.

Appellant's sole contention is that the conduct prohibited by the Colorado offense of driving while ability impaired¹ ("DWAI") is not "the same or similar conduct" envisioned by NRS 484.3792(8) for purposes of enhancement under NRS 484.3792.² We disagree. We conclude that the Colorado offense of DWAI prohibits "same or similar" conduct to that prohibited by NRS 484.379(1). Cf. *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (holding that California law that prohibits driving under the influence prohibits the "same or similar" conduct as NRS 484.379 pursuant to 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

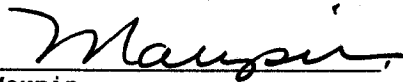
¹See Colo. Rev. Stat. § 42-4-1202(1)(b) (1992) (reenacted as amended at Colo. Rev. Stat. § 42-4-1301 (1997)).

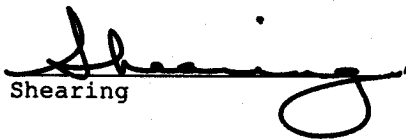
²Appellant reserved the right to appellate review of this issue as part of the written plea agreement. See NRS 174.035(3).

1197, 1198 (1996) (holding that Michigan law that prohibits driving while visibly impaired prohibits "same or similar" conduct under NRS 484.3792(8)). The conduct prohibited need not be identically described to fall within the "same or similar" conduct envisioned by NRS 484.4792(8).³ Marciniak, 112 Nev. at 243, 911 P.2d at 1198.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

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

³We conclude that appellant's reliance on Collins v. Department of Transportation, 735 A.2d 754 (Pa. Commw. Ct. 1999), is misplaced. First, the Pennsylvania statute at issue in Collins expressly prohibited driving while under the influence of alcohol "to a degree which renders the person incapable of driving." 735 A.2d at 758. Contrary to appellant's assertions, NRS 484.379(1) does not include similar language. In this respect, appellant's reliance on Cotter v. State, 103 Nev. 303, 738 P.2d 506 (1987) and Bostic v. State, 104 Nev. 367, 760 P.2d 1241 (1988), is misplaced as both cases involved NRS 484.3795, which at the time of those decisions included language suggesting that they applied to driving under the influence to a degree that rendered a person incapable of safely driving. Second, Collins is distinguishable because the issue in that case was whether the Arizona DUI provision was substantially similar to the Pennsylvania DUI provision. 735 A.2d at 756-57. In contrast, NRS 484.3792(8) does not require that the law of another jurisdiction prohibit substantially similar conduct, just that it prohibit "similar" conduct.