

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLEN NEELAND, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59642

FILED

OCT 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of felony driving under the influence of alcohol. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Richard Allen Neeland, Jr., contends that the district court erred by determining that his 2005 New York felony DUI conviction could be used to enhance his Nevada DUI sentence because New York's penalties for DUI are harsher than those imposed by Nevada and his New York felony conviction for a second DUI cannot be considered the same or similar conduct.<sup>1</sup>


NRS 484C.410 provides that a person who has previously been convicted of felony DUI in this state or "any other jurisdiction that prohibits the same or similar conduct," and subsequently commits another DUI, is guilty of a category B felony regardless how much time has passed since the last felony conviction. NRS 484C.410(1), (2). The prohibited conduct does not have to be identical to fall within the meaning of "same

<sup>1</sup>Neeland preserved this issue for appeal. See NRS 174.035(3).

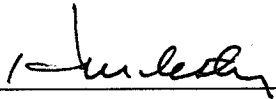
or similar.” See Marciniak v. State, 112 Nev. 242, 243-44, 911 P.2d 1197, 1198 (1996).

The conduct prohibited by New York’s DUI statute, N.Y. Veh. & Traf. Law § 1192 (McKinney 2009), is the same or similar to the conduct prohibited by Nevada’s DUI statute, NRS 484C.110. The fact that New York punishes DUI recidivism differently is of no consequence. Therefore, we conclude that the district court properly determined that Neeland’s New York felony DUI conviction could be used to enhance his sentence, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Chief Judge, Second Judicial District Court  
Washoe County Alternate Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk