

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT GUNTER,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JAMES M. BIXLER, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 60025

**FILED**

FEB 09 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingou*  
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of habeas corpus challenges petitioner's pretrial custody on the grounds that the conduct alleged in the charging document is not criminal under NRS 484C.410. We conclude that no relief is warranted.

Petitioner has not provided this court with a copy of the charging document but states that he is charged with violating NRS 484C.410 and complains that his conduct is not criminal under that statute because the prior offense listed in the charging document occurred more than 7 years before the charged offense. He relies on subsections 2 and 6 of the statute as support. Petitioner is mistaken. NRS 484C.410 makes it a felony when a person violates NRS 484C.110 (driving under the influence) or NRS 484C.120 (driving a commercial vehicle under the influence) and that person has previously been convicted of certain offenses enumerated in subsection 1. Unlike NRS 484C.400, which determines the offense level for violations of the same statutes (NRS

484C.110 and NRS 484C.120) based on whether the defendant has similar prior convictions within the preceding 7 years, NRS 484C.410 does not limit the prior convictions to those within 7 years. The subsections highlighted by petitioner do not impose any such restriction. Subsection 2 does not mention a 7-year limit, it just emphasizes that the sequence of offenses and convictions is irrelevant. Although subsection 3 of the statute mentions offenses being within 7 years, that provision addresses when a term of confinement imposed under the statute may be served intermittently and does not limit the application of NRS 484C.410(1) to prior offenses that are within 7 years of the charged offense. Subsection 6 similarly provides no support for petitioner's claim as it merely explains how to "determin[e] whether one offense occurs within 7 years of another offense" (which is only relevant as to the limit on intermittent confinement under subsection 3) and does not limit the application of NRS 484C.410(1) to prior offenses that are within 7 years of the charged offense.

The statutory language is clear on its face and, despite petitioner's best efforts, is not ambiguous. A person who violates NRS 484C.110 or 484C.120 and has a prior conviction for any offense listed in NRS 484C.410(1) is guilty of a category B felony without regard to the length of time between the prior offense and the subsequent offense. Because petitioner has not demonstrated that he is entitled to relief, we

ORDER the petition DENIED.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. James M. Bixler, District Judge  
Law Offices of John G. Watkins  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk