

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCIS BAYANI GAON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JENNIFER P. TOGLIATTI, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 72392

FILED

MAY 16 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of habeas corpus. Petitioner Francis Bayani Gaon asserts the statute he is being prosecuted under, NRS 484C.410, is unconstitutionally vague and, therefore, the restraint on his liberty is illegal. We conclude no relief is warranted.

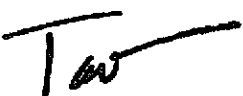
Gaon is charged with violating NRS 484C.110 and NRS 484C.410. He asserts sections (3) and (6) are improperly included in NRS 484C.410 and, as a result, an ordinary person could reasonably guess that sections (3) and (6) require the prior and principal offense be committed within 7 years of each other in order for NRS 484C.410(1) to apply. Gaon is mistaken. NRS 484C.410(1) 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 enumerated offenses. 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 statutory language of NRS 484C.410(1) is clear. A person who violates NRS 484C.110 or NRS 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.

Neither section (3) nor section (6) is vague and neither section can be read to limit consideration of prior convictions under NRS 484C.410(1) to those that occurred within 7 years. Although section (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. Section (6) 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 section (3)) and does not suggest the application of NRS 484C.410(1) should be limited to prior offenses that are within 7 years of the charged offense.

Because Gaon has not demonstrated he is entitled to relief, we ORDER the petition DENIED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Law Offices of John G. Watkins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk