IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NGUYEN HOOKER,
Appellant,
vs.
CITY OF LAS VEGAS,
Respondent.

No. 87000-COA

FILED

FEB 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nguyen Hooker appeals from an order of the district court denying an amended petition for a writ of mandamus filed on May 25, 2023. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.

In his petition, Hooker argued that the municipal court judge's decision to deny his motion to dismiss the criminal complaint was capricious because it was contrary to the evidence and the established rules of law. Hooker is facing a charge of first offense driving under the influence of alcohol (DUI). Hooker alleged that he faces fines in excess of $1000 if convicted of first offense DUI. Hooker claimed that because NRS 193.120(3) limits misdemeanors to a maximum fine of $1000 and the total fines possible exceeded that threshold, first offense DUI is not a misdemeanor and the municipal court lacks jurisdiction over his charge.[1]

[1]Municipal courts "have jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities." NRS 5.050(2). Las Vegas Municipal Code 10.02.010 provides, "The commission of any act within the corporate limits of the City . . . which is made a misdemeanor by the laws of the State is hereby declared to be and shall constitute a misdemeanor."

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Generally, a writ of mandamus will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. A petitioner "carr[ies] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). "We generally review a district court's grant or denial of writ relief for an abuse of discretion. However, when the writ involves questions of statutory construction, including the meaning and scope of a statute, we review the decision de novo." *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

"The goal of statutory interpretation is to give effect to the Legislature's intent." *Bolden v. State*, 139 Nev., Adv. Op. 46, 538 P.3d 1161, 1165 (Ct. App. 2023) (internal quotation marks omitted). To determine the Legislature's intent, we begin by looking at the statute's plain language. *Id.* In doing so, we "interpret a rule or statute in harmony with other rules or statutes." *Id.* (internal quotation marks omitted). "[I]t is well settled that where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction." *Patterson v. Las Vegas Mun. Ct.*, 139 Nev., Adv. Op. 35, 535 P.3d 657, 659 (2023) (internal quotation marks omitted).

Hooker argued that first offense DUI is not a misdemeanor as defined by NRS 193.120(3) because a defendant is subject not only to a fine of up to $1000 for the DUI, *see* NRS 484C.400(1)(a)(3), but also to an

additional $35 penalty pursuant to NRS 484C.500(1), bringing the total possible fines to $1035, which is above the limit set by NRS 193.120(3). NRS 193.120(3) is a general statute that broadly defines misdemeanors. NRS 484C.400(1)(a) specifically applies to first offense DUIs and provides that a person who commits a first offense DUI "is guilty of a misdemeanor." The more specific statute governs this issue. *See Patterson*, 139 Nev., Adv. Op. 35, 535 P.3d at 660 (providing that a specific statute controls over a general statute). The plain language of NRS 484C.400(1)(a) clearly, unambiguously, and unmistakably demonstrates the Legislature's intent to make first offense DUI a misdemeanor offense. Therefore, the plain language of NRS 484C.400(1)(a) weighs in favor of holding that first offense DUI is a misdemeanor and that the municipal court has jurisdiction to adjudicate this offense.

Hooker also argued that the penalty imposed by NRS 484C.500(1) is a criminal penalty that aggregates the total possible fine he faces for a first offense DUI conviction above the $1000 misdemeanor jurisdictional amount.[2] NRS 484C.500(1) provides that a person who is convicted of DUI must pay the Department of Motor Vehicles (Department) a "civil penalty" of $35 in addition to any other penalty provided by law. *See* NRS 481.015(2)(a) (providing that as used in Title 43, "'Department' means the Department of Motor Vehicles."). This court employs a two-part test to determine whether a particular punishment is criminal or civil. *State v. Lomas,* 114 Nev. 313, 316, 955 P.2d 678, 680 (1998). First, this court must ask "whether the legislature, in establishing the penalizing mechanism,

[2]NRS 484C.400(1)(a)(3), the statute governing fines imposed for a first offense DUI, requires the court to impose a fine of "not less than $400 nor more than $1,000."

indicated either expressly or impliedly a preference for one label or the other." *Id.* (internal quotation marks omitted). "Second, even in those cases where the legislature indicates an intention to establish a civil penalty, a court should inquire further whether the statutory scheme is so punitive either in purpose or effect, as to transform what was clearly intended as a civil remedy into a criminal penalty." *Id.* (internal quotation marks and punctuation omitted). In making this determination, the *Lomas* court identified seven factors that must be considered in relation to the statute on its face where "only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Id.* at 316-17, 955 P.2d at 680.

Turning to the first part of the test, here the Legislature explicitly indicated its intent to establish a civil penalty by calling the required $35 payment a "civil penalty." In addition, the Legislature made the Department in charge of collecting the payment and required the Department to withhold issuance of or cancel a driver's license until the payment is made. *See* NRS 484C.500(2), (3). This further indicates the Legislature's intent to establish a civil penalty. *See Lomas*, 114 Nev. at 317, 955 P.2d at 680-81 (providing that "the legislature's decision to confer authority to impose a civil sanction on an administrative agency is prima facie evidence that the legislature intended to provide for a civil sanction").

Turning to the second part of the test, we note that Hooker failed to argue the relevant factors below. And he otherwise failed to demonstrate by "the clearest proof" that requiring a person convicted of DUI to pay $35 to the Department before the Department will issue the person a driver's license is a criminal penalty because it "is so punitive in form and effect as to render it criminal despite the legislature's contrary intent." *Id.*

at 317, 955 P.2d at 681.[3] In light of these circumstances, we conclude that first offense DUI is a misdemeanor and that the district court did not abuse its discretion by denying Hooker's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jennifer L. Schwartz, District Judge
The Pariente Law Firm, P.C.
Attorney General/Carson City
Las Vegas City Attorney
Eighth District Court Clerk

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[3]Hooker makes additional arguments on appeal in support of his claim that the $35 payment required by NRS 484C.500(1) is not a civil penalty. Because Hooker did not make these arguments below, we decline to address them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).