

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURO CESAR PINTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41160

FILED

SEP 04 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of driving under the influence with two or more prior convictions. The district court sentenced appellant to a prison term of 12 to 36 months, and ordered appellant to pay a fine of \$2,000.00.

Appellant contends that the district court erred by denying appellant's pretrial petition for a writ of habeas corpus. Appellant specifically preserved his right to appeal this issue as part of his guilty plea agreement.

Appellant first argues that the municipal court abused its discretion by refusing to allow appellant to plead guilty to misdemeanor driving under the influence. However, NRS 174.035(1) specifically provides that: "the court may refuse to accept a plea of guilty."¹

Appellant also argues that the municipal court abused its discretion by granting a continuance to the City of Sparks. The granting

¹See also Jefferson v. State, 108 Nev. 953, 954, 840 P.2d 1234, 1235 (1992).

of a continuance is within the sound discretion of the trial court.² We conclude that the district court did not abuse its discretion by granting a continuance in this case.

Appellant next argues that the complaint was improperly dismissed and re-filed, and should therefore have been dismissed with prejudice. However, NRS 174.085(5) specifically provides that the prosecuting attorney may dismiss a complaint without prejudice to the right to re-file. To the extent that appellant argues that he should have been released without bail when the subsequent complaint was filed, we conclude that even if appellant should have been released without bail, dismissal of the complaint is not the appropriate remedy.


Finally, appellant argues that he had a right to take a blood test but was not informed of that fact by the arresting officer, and the results of his breath test were therefore not admissible. Following the evidentiary hearing on appellant's petition, the district court specifically found that appellant could have selected either a blood test or a breath test and that he selected a breath test. The district court further found that the arresting officer substantially complied with the requirements of NRS 484.383. NRS 484.389(2) provides that: "a court or hearing officer may not exclude evidence of a required test . . . if the police officer . . . substantially complied with the provisions of NRS 484.382 to 484.393,


²Batson v. State, 113 Nev. 669, 674, 941 P.2d 478, 482 (1997).


inclusive." The district court's findings are supported by substantial evidence, and will therefore not be disturbed on appeal.³

Having considered appellant's arguments and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Charles C. Diaz
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

³See Rice v. State, 113 Nev. 425, 427, 936 P.2d 319, 320 (1997).