

281 P.3d 1221 (Table)
Unpublished Disposition
Supreme Court of Nevada.

The STATE of Nevada, Department
of Motor Vehicles, Appellant,

v.

Sean Michael ELEFANTE, Respondent.

No. 50563. | Feb. 27, 2009.

Synopsis

Background: Motorist requested an administrative hearing to review a three-year revocation of his driver's license after he was convicted of driving under the influence (DUI) for the third time in seven years. An administrative law judge (ALJ) affirmed the three-year revocation. Motorist petitioned for judicial review. The Eighth Judicial District Court, Clark County, [James M. Bixler, J.](#), granted the petition and reversed the ALJ's decision. The Department of Motor Vehicles (DMV) appealed.

Holding: The Supreme Court held that DMV was required to revoke motorist's driving privileges for 90 days, not for three years.

Affirmed.

West Headnotes (1)

[1] **Automobiles**

 **Extent of discipline in general; hardship and mitigating circumstances**

Department of Motor Vehicles (DMV) was required to revoke motorist's driving privileges for 90 days, not for three years, after motorist was convicted of driving under the influence (DUI) for the third time in seven years; motorist was nonetheless convicted of a first-offense DUI, such that the period of revocation was 90 days. West's [NRSA 483.460](#), [484.3792\(1\)\(a\)](#).

[Cases that cite this headnote](#)

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Opinion

ORDER OF AFFIRMANCE

*1 This is an appeal from a district court order granting a petition for judicial review regarding the administrative revocation of respondent's driving privileges. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

In October 2004, respondent was arrested for driving under the influence (“DUI”). On September 28, 2006, the original charge of a second DUI offense stemming from the 2004 arrest, was amended to a first offense.¹ That same day, respondent was convicted of a first offense DUI after pleading guilty to that amended charge. He was then sentenced as a first offender pursuant to [NRS 484.3792\(1\)\(a\)](#). After receiving a record of this conviction, which was actually respondent's third DUI conviction, the DMV revoked respondent's driving privileges for 3 years under [NRS 483.460\(1\)\(a\)\(2\)](#), which, as amended in 2005, imposes upon the DMV a mandatory duty to revoke an individual's driving privileges “[f]or a period of 3 years if the offense is ... punishable as a felony pursuant to [NRS 484.3792](#).” An individual who has a third offense for DUI within a 7 year period is guilty of a category B felony. See [NRS 484.3792\(1\)\(c\)](#)

Respondent subsequently requested an administrative hearing to review the 3–year revocation of his driver's license. Respondent argued that under the amended version of [NRS 483.460](#), the number of DUI convictions was no longer relevant in determining the length of revocation. Respondent maintained that because his September 2006 conviction was for a first offense, which is punishable under [NRS 484.3792\(1\)\(a\)](#), the revocation period for that offense should be modified to 90 days pursuant to [NRS 483.460\(1\)\(c\)](#), which imposes a revocation “[f]or a period of 90 days, if the offense is ... punishable [as a first offense] pursuant to” [NRS 484.3792\(1\)\(a\)](#). The administrative law judge affirmed the three-year revocation of respondent's driving

privileges and respondent sought judicial review in the district court. Disagreeing that [NRS 483.460](#) required a three-year revocation, the district court granted respondent's petition for judicial review and reversed the administrative law judge's decision. This appeal from the DMV followed.

In *State, Department of Motor Vehicles v. Terracin*, 125 Nev. —, — P.3d — (Adv.Op. No. 4, January 29, 2009), we recently held that the unambiguous language of [NRS 483.460](#) based the period of revocation on the level of punishment under [NRS 484.3792](#). Accordingly, we held that the “DMV must revoke an individual's driving privileges for 90 days if the driver is punishable as a first-time DUI offender pursuant to [NRS 484.3792\(1\)\(a\)](#).” *Terracin*, 125 Nev. —, — P.3d —. We therefore conclude that it was improper for the DMV to revoke respondent's driving privileges for three years. Although the September 2006 DUI

conviction was respondent's third DUI conviction in a seven year period, he was nonetheless convicted of a first offense DUI, which is punishable pursuant to [NRS 484.3792\(1\)\(a\)](#). Following a DUI conviction that is punishable pursuant to [NRS 484.3792\(1\)\(a\)](#), the period of revocation under [NRS 483.460\(1\)\(c\)](#) is 90 days. Therefore, the DMV was required to revoke respondent's driving privileges for a 90-day period, not for three years. Accordingly, we conclude that the district court's order granting respondent's petition for judicial review should be affirmed.

*2 It is so ORDERED.²

Parallel Citations

2009 WL 1472341 (Nev.)

Footnotes

- ¹ Respondent had two prior DUI convictions in 2001 and 2005, both of which were for first offenses.
- ² We note that the DMV does not argue that the amended version of [NRS 483.460](#) should not apply to this case because respondent was arrested for his third DUI in 2004, before the amended version of 483.460 went into effect in 2005. As such, we deem that argument waived.