

ALBUQUERQUE CRIMINAL LAWYER BLOG

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New Mexico Court of Appeals Rules One Year Statute of Limitations Applies to First Time DWI

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The recent New Mexico Court of Appeals case of State v. Trevizo addressed the statute of limitations on first time DWI and reckless driving in New Mexico. The court concluded both first time DWI and reckless driving are petty misdemeanors under New Mexico law and therefore subject to a one year statute of limitations.

The facts are pretty straightforward. The defendant was arrested on October 13, 2005. The criminal complaint for DWI and reckless driving was not filed until April 12, 2007, one day short of 18 months from the date of arrest.

The defendant filed a motion to dismiss in Albuquerque Metropolitan Court for violation for one year statute of limitations on petty misdemeanors. The motion was denied and the defendant was convicted on both counts. The defendant appealed to District Court which reversed the Metro Court decision. The State then appealed the District Court ruling.

The relevant statutes as set forth by the Court of Appeals provide the following statute of limitations:

C. for a misdemeanor, within two years from the time the crime was committed; D. for a petty misdemeanor, within one year from the time the crime was committed; G. for any crime not contained in the Criminal Code or where a limitation is not otherwise provided for, within three years from the time the crime was committed.

The State argued under paragraph C, D and G of NMSA §30-1-8 (now paragraphs C, D & H under 2009 Amendments) resulted in either a 2 or 3 year statute of limitations. The State argued that because the offenses were in the MVD code and not the criminal code, they should be covered by the catchall 3 year provision in paragraph G. In the

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alternative, the State argued that because the MVD code stated that all MVD code violations were classified as misdemeanors in the absence of contrary language in the code.

The Court of Appeals disagreed pointing out a number of problems with the State's position. The Court noted the absurdity of placing all MVD violations under the 3 year statute of limitations by virtue of the fact that they fall outside the criminal code. The result would be that not only would first time DWI and reckless driving be covered by the 3 year statute, so too would "speeding violations, parking violations, failure to signal, following too closely, and other traffic violations." The result would be that these petty traffic offenses would carry limitations period equal to that to serious felonies.

After a thorough analysis of the case-law and statutes, the Court concluded that the classification of a crime should be determined by the possible penalties. In doing so, the Court also addressed the State's position regarding the classification of all MVD violations not specifically delineated in the code.

Granted the MVD code does have some contradictory language. Section 66-8-7(B) of the Motor Vehicle Code provides "Unless another penalty is specified in the Motor Vehicle Code, every person convicted of a misdemeanor for violation of any provision of the Motor Vehicle Code shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than ninety days or both." Thus the MVD sentencing guidelines are consistent with sentencing for a petty misdemeanor despite the language suggesting that the offenses should be classified as misdemeanors.

Consistent with the possible sentencing of only 90 days, the Court concluded that both DWI first offense and reckless driving must be classified as a petty misdemeanor and therefore subject to the one year statute of limitation. For those facing dated DWI charges, keep in mind that the ruling is limited to first time DWI and reckless driving. Repeat DWI offenders face much longer sentences which would bring them under the 2 year misdemeanor statute of limitation or in 4th or subsequent DWI offenses, the felony limitations period.

Due to the inconsistency in the MVD code language, and the seriousness with which DWI is treated in New Mexico, it is likely that this case will be appealed to the New Mexico Supreme Court. In addition or in the alternative, the legislature may address the issue in the next session to lengthen the statute of limitations. As such, if you are faced with a situation like this, be sure to consult with a DWI attorney to identify the limitations period on your case.

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