

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)
)
 Appellant,)
)
 v.)
)
 GIOVANNI MANOCCHIO,)
)
 Appellee.)
)

CASE NO: 2013-0095

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District

MERIT BRIEF OF APPELLEE, GIOVANNI MANOCCHIO

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STATEMENT OF THE FACTS

Mr. Manocchio was indicted by the Cuyahoga County Grand Jury in March 2003 for Driving Under the Influence with prior convictions in violation of R.C. 4511.19. The offense charged was a third degree felony due to his prior convictions. On April 9, 2003, Mr. Manocchio entered a guilty plea to the charge. (Cuyahoga County Common Pleas Case Number CR-03-435289, Journal Entry of April 16, 2003.) On May 7, 2003, Mr. Manocchio was sentenced to a one-year prison term as well as given a life-time driver's license suspension. (CR-03-435289, Journal Entry of May 16, 2003.)

On November, 2, 2007, he filed a Motion for Termination of Suspension and/or Restoration of Driving Privileges with Appropriate Monitoring. After nearly a year, the court scheduled a hearing, then canceled it, asking both the attorney for Mr. Manocchio and the State to brief the issues. On February 2, 2009, the motion was denied after a hearing. (CR-03-435289, Journal Entry of 2/2/09.)

On February 24, 2012, Mr. Manocchio filed another motion for driving privileges to which the State responded with their opposition motion on March 5, 2012. (CR-03-435289, Journal Entries of 2/2/12 and 3/5/12.)

On April 23, 2013, during a hearing on the motion (Tr. 3-15) defense counsel informed the court that Mr. Manocchio had completed alcohol treatment programs, had been active in AA, and was requesting driving privileges with an ignition interlock and restricted plates. Defense counsel also explained that his understanding of the law only requires the first three years of Mr. Manocchio's suspension be without any driving privileges and allows privileges after that time. (Tr. 6).

The State simply stated its belief that Mr. Manocchio was a poor risk (Tr. 7). The court directly inquired of the State whether there was anything that forbid the granting of driving privileges to which the State responded "It doesn't say anything that it can't permit any type of privileges" (Tr. 7).

Over the State's objection, the court granted the request for driving privileges with the requirement of an ignition interlock and restricted plates (Tr. 12-14).

The Eighth District Court of Appeals granted the State leave to appeal the trial court's decision. (Case No. 98473, Journal Entry of 6/25/12.)

On appeal, the State argued for the first time that the granting of limited driving privileges was a modification of a suspension that was not permitted under R.C. 4510.54.

The majority of the Eighth District agreed with Mr. Manocchio that the differing terms "limited driving privileges" and "modification" have different meanings due to the "specificity with which the General Assembly defined the contours of limited driving privileges. *State v. Manocchio*, 8th Dist. No. 98473, 2012-Ohio-5720.

The State has since appealed to this Honorable Court and said appeal was accepted.

ARGUMENT

APPELLANT'S PROPOSITION OF LAW: A TRIAL COURT IS WITHOUT AUTHORITY TO MODIFY A LIFETIME DRIVER'S LICENSE SUSPENSION WHERE DEFENDANT FAILS TO MEET THE STATUTORY CRITERIA PROVIDING FOR MODIFICATION AS SET FORTH UNDER R.C. 4510.54

The true matter under decision is whether a term that has been specifically defined and its limits delineated in no less than ten different sections of the revised code is redefined by a section of the revised code that does not specifically mention that term.

Specifically, the term "limited driving privilege" has been defined and a court's ability to grant such privileges spelled out and limited in no less than ten sections of the revised code. Those code sections are as follows:

R.C. 4510.021	R.C. 4510.038	R.C. 4510.11	R.C. 4510.13
R.C. 4510.17	R.C. 4510.31	R.C. 4510.44	R.C. 4511.19
R.C. 4511.197	R.C. 4511.198		

While the General Assembly has amply demonstrated its ability to specifically address limited driving privileges when it chooses to do so, the State has proposed that a different term, "modification," is also applicable to limited driving privileges.

Ohio courts are specifically granted the power to grant a person whose driver's license is suspended limited driving privileges by R.C. 4510.021. That section states:

(A) Unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code, a court may grant limited driving privileges for any purpose described in division (A)(1), (2), or (3) of this section during any suspension imposed by the court. In granting privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges shall be for any of the following limited purposes:

- (1) Occupational, educational, vocational, or medical purposes;
- (2) Taking the driver's or commercial driver's license examination;
- (3) Attending court-ordered treatment.

Furthermore, in the case of driver's license suspensions as a result of DUI convictions, a court is authorized to grant limited driving privileges in the same sections of the code that suspends the driver's license. As it pertains to this Appellee, that section is R.C. 4511.19(G)(1)(e)(iv), which specifically references R.C. 4510.021 as well as R.C. 4510.13, which was previously referred to in the above quoted section.

R.C. 4510.13 puts limits on a court's ability to grant limited driving privileges. Those myriad limits and requirements are as follows:

- (A)(2) forbids a judge from suspending certain portions of the license suspension;
- (A)(3) forbids the grant of driving privileges if in the prior six years the offender has been convicted of three or more DUI's;
- (A)(4) forbids the grant of limited driving privileges for a commercial driver's license;
- (A)(5) forbids the grant of limited driving privileges during a specified time at the beginning of a suspension for a DUI;
- (A)(6) forbids the grant of limited driving privileges during a specified time at the beginning of a suspension for a refusal to submit to a chemical test;
- (A)(7) requires restricted license plates for those convicted of multiple DUIs;
- (A)(8) specifies what a court must do if an offender attempts to skirt his requirement that he only operate a vehicle equipped with an ignition interlock device;
- (A)(9) requires an additional fee for those who require an ignition interlock device;
- and (A)(10) permits a court to increase by a factor of two the length of a person's suspension should they tamper with an ignition interlock device or if that device prevents them from starting the car because alcohol is detected.

Nearly all of the subparts listed are applicable to those convicted of DUI offenses in some way. Specifically, (A)(2) by forbidding the suspension of the driver's license suspension imposes that driver's license suspension immediately upon the offender.

Additionally, (A)(5) is a lengthy section detailing how long a person must wait before they can

be granted limited driving privileges based upon the number of past convictions they have had. It also requires an ignition interlock device if the offender is a multiple offender. As specifically applies to this Appellee, R.C. 4510.13(A)(5)(g) forbids him from getting any limited driving privileges for the first three years of his suspension, then permitting the grant of limited driving privileges but only with the installation of an ignition interlock device.

Despite the fact that this section gives specific time periods before which an applicant cannot be granted limited driving privileges the State argues that a different section of the Code imposes an additional time period and that section of the Code does not even contain the phrase “limited driving privileges.”

The State attempts to do this by pointing to the language in R.C. 4510.021 that states “Unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code” and putting an emphasis on the words “or any other section of the Revised Code” in order to get effect from R.C. 4510.54. However, the State also ignores the word “*expressly*.” Express has been defined as “directly, firmly, and explicitly stated.” *Miriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/express> (accessed June 27, 2013). Explicit is defined as “fully revealed or expressed without vagueness, implication or ambiguity : leaving no question as to meaning or intent.” *Id.*, <http://www.merriam-webster.com/dictionary/explicit> (accessed June 27, 2013).

The language of R.C. 4510.54 makes no mention of “limited driving privileges.” Instead it states, in relevant part:

- (A) Except as provided in division (F) of this section, a person whose driver’s or commercial driver’s license has been suspended for life under a class one suspension or as otherwise provided by law or has been suspended for a period in excess of fifteen years under a class two suspension may file a motion with the sentencing court for modification or termination of the suspension. The person filing the motion shall demonstrate all of the following: ****

Section 4510.54 makes no express or explicit mention of “limited driving privileges.” By the

clear language of R.C. 4510.021 a court is permitted to grant limited driving privileges unless expressly prohibited.

The State cites a case for the proposition that every word, phrase, sentence and part of an act should be given significance and effect and that nothing can be read out of, subtracted from, or deleted in the interpretation of a statute. *Wachendorf v. Shaver*, 149 Ohio St. 231, 237, 78 N.E.2d 370 (1948). But it attempts to do those very things with the word “expressly” in R.C. 4510.021.

R.C. 4510.54 is the only section concerning driver’s license suspensions that uses the word “modification.” The word modification is not an express and explicit prohibition on limited driving privileges. Instead “modification” contains vagueness and ambiguity.

There are plenty of other interpretations of this section that continue to give effect to the word modification, including shortening the length of the suspension without immediately terminating it, doing away with the requirement of restricted plates and/or interlock device, or suspending further imposition of the driver’s license suspension itself.

The Eighth Appellate District agreed finding that the terms “modification” and “limited driving privileges” are different and an interpretation that they both encompass the same meaning does not “differentiate and give effect to various terms used by the General Assembly in defining the scope of license suspensions.” *Manocchio*, 2012-Ohio-5720 at ¶ 7.

All of the sections relevant to driver’s license suspensions and limited driving privileges have to be construed together to give them all effect. When that is done it raises the question of why would the phrase “limited driving privileges” be used numerous times but then forsaken in one section if that lone section was meant to apply to “limited driving privileges?” It is also worth pondering why further limitations on when limited driving privileges could be granted would not be in the same section as the other limitations, namely R.C. 4510.13? The interpretation that answers those questions and gives effect to all sections of the code is that R.C. 4510.54’s “modification” is indeed a catch-all that

encompasses all things not specifically mentioned elsewhere in the code. And “limited driving privileges” is specifically mentioned numerous times elsewhere in the code.

CONCLUSION

Appellee respectfully requests that this Honorable Court Affirm the decision of the Eighth District Court of Appeals. Doing so will give effect to all the terms used in the Revised Code without adding, subtracting or reading out anything from the statutes and give significance and effect to the different terms chosen by the General Assembly and uphold a logical reading of all code sections relevant to the issue of limited driving privileges.

Respectfully Submitted,


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