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Opinion No. 00-074

Guilty plea to adult driving while impaired by a person between the ages of 18 and 21.

QUESTION

1. If a defendant between 18 and 21 years of age pleads guilty in General Sessions court to adult driving while impaired in violation of Tenn. Code Ann. §55-10-418, is the judgment void or voidable?

2. If the judgment is void or voidable, what action can be taken by the District Attorney to remedy the situation after the judgment is final?

OPINIONS

1. A judgment for adult driving while impaired entered pursuant to Tenn. Code Ann. §55-10-418 against a criminal defendant who is between the ages of 18 and 21 is void if the judgment or record contains a plain statement of the defendant's age at the time of the offense. If the judgment or record does not contain a plain statement of the defendant's age at the time of the offense the judgment is voidable. A judgment entered by a trial court in direct contravention of express statutory provisions is an illegal judgment.

2. An illegal judgment can be corrected at any time. After the judgment becomes final, the District Attorney General can bring the illegal judgment to the trial court's attention through a motion to correct an illegal judgment. The trial court has a duty to correct an illegal judgment upon being notified of the illegality.

ANALYSIS

1. Tenn. Code Ann. §55-10-418(a) provides that a "person twenty-one years (21) of age or older" who drives or is in physical control of a motor vehicle while such person's ability to operate the vehicle safely is impaired due to the consumption of drugs or alcohol "commits the offense of adult driving while impaired." Similarly, Tenn. Code Ann. §55-10-415(a)(1)-(c) establishes that a person "age sixteen (16) or over but under age twenty-one (21)" who drives a motor vehicle while

under the influence of alcohol or drugs commits the offense of "underage driving while impaired".

The Court of Criminal Appeals has held that the punishment for a person between 18 and 21 years of age is limited to the penalty prescribed by statute for underage driving while impaired. *See State v. Crain*, 972 S.W. 2d 13, 16 (Tenn. Crim. App. 1998); Tenn. Code Ann. §55-10-415(d)(1). Accordingly, the only sentence available to a trial court sentencing a defendant between 18 and 21 years of age is a suspension of the defendant's driver's license for one year and a fine on $250, with the added possibility of public service work. Tenn. Code Ann. §55-10-415(d)(1). However, a person sentenced under Tenn. Code Ann. §55-10-418 faces a mandatory fine of $500. Thus, when a guilty plea is accepted from a defendant between 18 and 21 years of age to adult driving while impaired, that guilty plea is accepted in violation of Tenn. Code Ann. §55-10-415 and *State v. Crain*.

When a guilty plea is entered, the defendant waives several constitutional rights. For this waiver to be valid under the due process clause of the Fourteenth Amendment, it must be voluntary and knowledgeable. *State v. Mackey*, 553 S.W. 2d 337, 340 (Tenn. 1977). Furthermore, before a trial court may accept a guilty plea there must be a factual basis for the plea. *Id. at* 341. The factual basis requirement exists to insure that the guilty plea is made with the understanding that the admitted conduct actually constitutes the offense with which the defendant is charged. *State v. Lord*, 894 S.W. 2d 312, 316 (Tenn. Crim. App. 1994), *perm. app. denied*, (Tenn. 1995).

Tenn. Code Ann. §55-10-418(a) applies only to defendants over 21 years of age. Accordingly, the factual basis for a plea of guilty to adult driving while impaired pursuant to that statute, must include a showing that the defendant is over 21 years of age. Therefore, it is the opinion of this office that a plea of guilty by a defendant between 18 and 21 years of age to a charge of adult driving while impaired is not a voluntary and knowledgeable plea.

A void judgment is one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment. *Archer v. State*, 851 S.W.2d 157, 161 (Tenn. 1993). A voidable judgment is one which is facially valid and requires proof beyond the face of the record or judgment to demonstrate that it is void. *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998). Accordingly, if the judgment or record contains a plain statement of the defendants age at the time of the offense, the judgment is void because the trial court did not have the statutory authority to enter the judgment. If the judgment does not contain a plain statement of the defendant's age at the time of the offense, the judgment is voidable upon a showing that the defendant was not over the age of 21. An illegal judgment is one that is entered by the trial court in direct contravention of an express statutory provision. *State v. Burkhart*, 566 S.W. 2d 871, 873 (Tenn. 1978); *See also* Tenn. R. Crim. P. 32 (upon a guilty plea, sentence shall be set as provided by law).

2. There are two procedures for collaterally attacking a judgment that is void or voidable in Tennessee, to wit: the post conviction procedure act and the writ of habeas corpus. However, these remedies are exclusive to the aggrieved party, i.e. the criminal defendant or prisoner. *See* Tenn.

Code Ann. §40-30-202; Tenn. Code Ann. §29-21-101.

This office has been asked what remedy is available to the District Attorney General when the judgment rendered by the trial court is void or voidable. While the District Attorney General has no procedural remedy for collaterally attacking a void or voidable judgment, the District Attorney General can ask the trial court to correct an illegal judgment. A trial court may correct an illegal judgment at any time, even if it has become final. Furthermore, the trial court has a duty to correct an illegal judgment as soon as the illegality is brought to its attention. *State v. Burkhart*, 566 S.W. 2d 871, 873 (Tenn. 1978); *See also State v. Russell*, 800 S.W. 2d 169 (Tenn. 1990), *State v. Hamlin*, 655 S.W.2d 200 (Tenn. Crim. App. 1983). When an illegal judgment was entered upon a guilty plea, the judgment should be set aside and a hearing held to determine if the defendant is entitled to withdraw his guilty plea. *See State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn.1978).

Accordingly, it is the opinion of this office that the District Attorney General may bring an illegal judgment to the trial court's attention through a motion under Rule 32 of the Tennessee Rules of Criminal Procedure requesting that the trial court correct the illegal judgment and enter the sentence as provided by law. *See* Tenn. R. Crim. P. 32.

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