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Opinion No. 02-042

Duration of the Revocation of Driving Privileges for DUI conviction by Formal Action of the Department of Safety

QUESTION

1. Whether the offense of driving on a license which is revoked as a result of a conviction for DUI under Tenn. Code Ann. §55-10-401 can be used as a predicate for establishing the driver's habitual offender status under the Motor Vehicle Habitual Offenders Act, Tenn. Code Ann. §§55-10-601 through 55-10-618, when the predicate offense occurs more than one year after the underlying DUI conviction?

2. If the answer to number 1 is yes, is there a limit on how long after the DUI conviction such an offense can be used as a predicate, subjecting the person to being adjudicated a Habitual Offender?

OPINION

1. Yes. The offense of driving on a license which is revoked as a result of a conviction for DUI can be used as a predicate for establishing habitual offender status when the predicate offense occurs more than one year after the underlying DUI conviction.

2. No. Driving privileges, once revoked as a result of a DUI conviction, remain revoked until reinstated by action of the Department of Safety regardless of the amount of time expired since the conviction.

ANALYSIS

The Motor Vehicle Habitual Offenders Act, codified at Tenn. Code Ann. §§ 55-10-601 through 55-10-618, was designed to help provide for the safety of all persons traveling on the highways of the state. It achieves this purpose by denying the privilege of operating a motor vehicle to persons who have demonstrated indifference to the safety and welfare of others using the highways and discouraging the repetition of driving violations. Tenn. Code Ann § 55-10-602. The Act provides for civil proceedings to have a person who has committed a certain number of enumerated predicate offenses within a certain amount of time adjudged a "habitual offender." Tenn. Code Ann. § 55-10-603(2). The consequence of being found a "habitual offender" is the loss of driving privileges for a minimum of three (3) years. Reinstatement after that period can occur only upon petition and in the discretion of the trial court upon

meeting all of the requirements of the financial responsibility laws. Tenn. Code Ann. § 55-10-615.

One of the enumerated predicate offenses under the Act is the following:

> (xv) A violation of § 55-50-504, relating to driving on a canceled, suspended or revoked license if the underlying offense resulting in such cancellation, suspension or revocation is an offense enumerated in items (i)-(xiv).

Tenn. Code Ann. § 55-10-603(2)(A)(xv).

The offense enumerated in "item" (viii) of section 55-50-504, in turn, is: "[a] violation of § 55-10-401, prohibiting intoxicated or drugged persons from driving." Thus, the legislature has provided that the offense of driving on a license which is revoked as a result of a DUI conviction is one of the enumerated offenses which can be used as a predicate for "habitual offender" proceedings. The question then becomes whether a license is still "revoked as a result of" a DUI conviction when more than one year has passed since the time the conviction was entered. In order to answer this question, it is necessary first to set forth the statutory context in which revocation "as a result of" a DUI conviction takes place.

1. Authority and Procedure for Revocation after Conviction. Tenn. Code Ann. § 55-50-501(a)(2) provides for the revocation of driver licenses by the Department of Safety after conviction for DUI:

> The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:
> * * *
>
> > (2) Driving a motor vehicle while under the influence of an intoxicant, or while under the influence of narcotic drugs, or while under the influence of drugs producing stimulating effects on the central nervous system.

Tenn. Code Ann. § 55-50-102(42) defines "revocation" as follows:

> "Revocation of driver license" means the termination by formal action of the department of a person's driver license or privilege to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the

> expiration of **at least one (1) year after** the date of revocation

(emphasis added).

Read together, Tenn. Code Ann. §§ 55-50-102(42) and 55-50-501(a)(2) indicate that a license revoked by the Department of Safety for conviction of DUI must remain revoked for at least one (1) year after the date of revocation. The Department's revocation of a license after conviction of DUI must be distinguished from the trial court's order prohibiting the defendant from driving after conviction of DUI.

2. Authority and Procedure for Court Order Prohibiting Driving for One Year after Conviction. Section 55-10-403 provides, in pertinent part, as follows:

> (a)(1) Any person or persons violating the provisions of §§ 55-10-401—55-10-404 shall, upon conviction thereof, for the first offense be fined not ...more than one thousand five hundred dollars ($1,500), and such person shall be confined in the county jail or workhouse for not ...more than eleven (11) months and twenty-nine (29) days; and the **court shall prohibit** such convicted person from driving a vehicle in the state of Tennessee **for a period of time of one (1) year**.[1]

(Emphases added). Thus, subsection (a)(1) directs trial courts to enter orders "prohibiting" convicted DUI offenders from operating motor vehicles for certain periods of time.

Despite the obvious difference between a court order prohibiting driving, and a department action revoking a license, other statutory provisions at first blush appear to confuse the two. Subsection (d) of that same statute indiscriminately refers to the prohibition action taken by the court under subsection (a)(1) as both a "revocation" and a "suspension." Subsection (d) states, in pertinent part, as follows:

> (d)(1)(A) Except as provided in subdivision (d)(2), if a person's motor vehicle operator's license has been **revoked**[2] pursuant to subsection (a), such person may apply to the trial judge for a restricted driver license.

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> (2) If ...another person is killed or suffers serious bodily injury as the proximate result of such driver's intoxication ...the court shall not have the authority to grant the issuance of a restricted ...license until such time as

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[1] The cited statute goes on to provide for prohibitions of two (2) years for a second offense and from three (3) to ten (10) years for a third offense. Tenn. Code Ann. § 55-10-403(a)(1).

[2] Prior to the amendments found in Acts 2000, ch. 863, § 4, subsection (d)(1) read: "if a person's motor vehicle operator's license has been **suspended** pursuant to subsection (a)..." (Emphasis added).

> the period of **suspension** mandated by subsection (a) has expired....
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>
> (3) Any person whose ...license has been **revoked** pursuant to subsection (a), and such person has a prior conviction for a violation of § 55-10-401 ...or a similar offense in any other jurisdiction, shall not be eligible for ...a restricted motor vehicle operator's license.

Notwithstanding the indiscriminate use of the terms "revoked" and "suspended" in subsection (d), a trial court's order pursuant to subsection (a) prohibiting a convicted DUI offender from driving for a specific period of time does not constitute a "revocation" of the driver's license for purposes of the Motor Vehicle Habitual Offenders Act. A driver's license may only be revoked by the Department of Safety pursuant to Tenn. Code Ann. § 55-50-501 and related statutes. *See Wilson v. State*, 197 Tenn. 17, 270 S.W.2d 340 (1954)(interpreting predecessor statute). As stated by the Tennessee Court of Criminal Appeals, "a statute giving a judge the right to prohibit certain individuals from driving motor vehicles for certain periods is not related to nor dependent upon sections giving the Department of Safety the power to grant, revoke or suspend licenses." *State v. Loden*, 920 S.W.2d 261, (Tenn. Crim. App. 1995) (quoting from *Goats v. State*, 211 Tenn. 249, 364 S.W.2d 889, 891-892 (Tenn. 1963) (A trial court does not have the authority to "revoke" a person's driver license).[3]

In Tenn. Op. Atty. Gen. No. 98-125 (July 20, 1998) this office discussed the difference between revocation by the Department and prohibition by the trial court. In essence, the trial court's prohibition order enjoins the offender from driving for a specific period of time. A person who violates the trial court's order could be held in contempt. *Id.*, p.2. In contrast, a person who is found driving on a license which has been revoked by the Department of Safety is in violation of criminal law and is subject to criminal penalties under Tenn. Code Ann. § 55-50-504 (Driving while license canceled[4], suspended[5] or revoked[6]).

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[3] In light of the foregoing, it is apparent that the legislature was referring in subsections (d)(1)(A) and (d)(3) to the "revocation" undertaken by the Department of Safety pursuant to § 55-50-501 upon its receipt of the trial court's order of conviction and prohibition entered under the authority provided in subsection (a)(1). Likewise, in subsection (d)(2) the legislature undoubtedly meant "prohibition" when it referred to the expiration of the "suspension" period mandated in subsection (a)(1). Any other reading would be wholly inconsistent with both existing case law and related statutes which set forth the powers and duties of the Department of Safety.

[4] Tenn. Code Ann. § 55-50-102(5) defines "Cancellation of driver license" as "the annulment or termination **by formal action of the department** of a person's driver license because of some error or defect in the license (or application) or because the licensee is no longer entitled to such license." (Emphasis added).

[5] Tenn. Code Ann. § 55-50-102(47) defines "Suspension of driver license" as "the temporary withdrawal **by formal action of the department** of a person's driver license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department, not to exceed six (6) months for any first offense, except as provided otherwise under law." (Emphasis added). It should also be noted that the cited Attorney General Opinion references Tenn. Code. Ann. § 55-10-403(d)(1) which provides for the issuance of a restricted license in the event of the "suspension" of the offender's driving privilege. As is discussed in both footnote 2 and footnote 3, herein above, since the cited Opinion was published, subsection (d)(1) was amended (Acts 2000, ch.

3. Duration of revocation. The minimum period of license revocation after DUI conviction is one (1) year. Tenn. Code Ann. § 55-50-102(42). The statute does not expressly set forth a maximum period for which the revocation may remain in effect. Since the trial court's prohibition and the Department's revocation are separate actions, stemming from separate legal authority, the one year limit upon the effectiveness of the prohibition order, Tenn. Code Ann. § 55-10-403(a)(1), cannot be implied to limit the effectiveness of the Department's revocation action. A DUI offender's license or privilege to drive does not spring back into effect upon the expiration of the trial court's prohibition period.

The question remains whether there is any other reason to conclude that there is a limit to the maximum period of revocation. The statutory definition of revocation set forth in Tenn. Code Ann. § 55-50-102(42) implies that there is no maximum period of revocation. That section makes clear that a license cannot be reinstated until an application has been filed with and approved by the Department of Safety. Thus, under the statutory definition, a revoked license remains in revoked status until it has been formally reinstated by the Department of Safety. This conclusion has been reached by the Court of Appeals in two recent opinions.[7]

863, § 4, effective July 1, 2000), replacing "suspended" with "revoked." Taken together with the comments to the new section, it is clear that the general assembly was referring in subsection (d)(1) to revocation by the Department of Safety pursuant to Tenn. Code Ann. § 55-50-501 and not revocation by the trial court.

[6] See definition of "revocation" in analysis section 1 of this opinion herein above.

[7] In *Hawks v. Department of Safety*, No. M1999-02785-COA-R3-CV, 2001 WL 1613889 (Tenn. Ct. App., Dec. 18, 2001) (copy attached), the appellant Hawks had her driving privileges revoked in March of 1996 for a first-time DUI conviction. She became eligible to apply for a new license one year thereafter, however, she did not do so. In September of 1997, she was charged with driving on a revoked license.

The first issue confronted by the Court of Appeals was "whether Ms. Hawks was driving 'at a time when' her driving privilege was revoked because of her DUI conviction, per Tenn. Code Ann. § 55-50-504(a)(1)."*Hawks*, at p. 4. Ms. Hawks asserted that after one (1) year, her license was no longer revoked "because of" her DUI conviction. The trial court agreed and found that she was instead driving at a time when her license was canceled, suspended or revoked "without regard to cause." *Id.*, at p. 4. The Court of Appeals specifically rejected the trial court's analysis and conclusion on this issue, holding as follows:

> ...a license remains revoked until it is reissued after compliance with statutory requirements. A person who drives on public roads after revocation of his or her license, but before reissuance or renewal of a license, is "driving at a time when the person's privilege to do so is canceled, suspended or revoked" within the meaning of Tenn. Code Ann. § 55-50-504(a)(1). **When the original revocation was due to a conviction for DUI, the driving privilege remains revoked "because of" that conviction.**

(emphasis added.) *Hawks*, at p. 7.

For the most part the Court of Appeals tracks the analysis herein. Also of note is the history of the General Assembly's actions in distinguishing the offense of driving on a license that was revoked "because of" a DUI conviction (or other enumerated offense) from the offense of driving on a license that was canceled, suspended or revoked for any

Conclusion

For the reasons set forth above, the period for which driving privileges are revoked for a DUI conviction pursuant to T.C.A. § 55-50-501 is not subject to a one year maximum. A license that is revoked by the Department of Safety remains revoked as a result of the underlying DUI offense until such time as it is reinstated by formal action of the Department of Safety. Accordingly, the offense of driving on a license which is revoked as a result of a DUI conviction can be used as a predicate for establishing the driver's habitual offender status regardless of how much time has passed between the underlying DUI conviction and the predicate offense, so long as the revoked license has not been reinstated.

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other reason. The *Hawks* court notes that by "enacting enhanced punishments" for the former, the General Assembly sought to distinguish it as a more egregious offense. The court concludes that the intended distinction should survive until the proper action is taken to renew the revoked license. *Hawks*, at p. 7.

Taylor v. Dept. of Safety, No. 1999-00594-COA-R3-CV (Tenn. Ct. App., Jan. 22, 2002) (copy attached) involved the forfeiture of a pickup truck as a result of the petitioner's having been cited for driving on a revoked license. The petitioner's license was revoked by the Department of Safety eleven years prior to the incident in question for a conviction of DUI. Petitioner failed to apply for reinstatement of his license after the court's prohibition period ended. Judge Cain closely tracks the analysis found in the *Hawks* opinion. Ultimately, Judge Cain borrows language directly from the *Hawks* Court when he concludes that a license revoked for a DUI conviction remains a revoked "because of' that conviction, regardless of time, until the Department reinstates the license. *Taylor*, p. 4.

No application for permission to appeal was filed by the State in either *Hawks* or *Taylor*.