LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date July 18, 2017

Case No. 90CR038686
90CR039022

STATE OF OHIO
Plaintiff

Christopher Pierre
Plaintiff's Attorney

VS

JACKIE R. HALE
Defendant

Jack W. Bradley & Michael Stepanik
Defendant's Attorney

This matter is before the Court on Defendant's Motion to Terminate or Modify Driver's License Suspension, filed May 1, 2017 on Case No. 90CR038686 *only*; the State responded in Opposition on June 15, 2017; hearing had on July 14, 2017.

The Motion is well-taken and hereby GRANTED.

See Judgment Entry.

JUDGE D. Chris Cook

cc: Pierre, APA
Bradley, Esq.
Stepanik, Esq.

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At the outset, it should be noted that this is the seventh (7th) such motion filed by the Defendant - all have been previously denied.

That said, a thorough review of the procedural history of these cases reveals a mishmash of bungled irregularity.

The electronically stored record of these antediluvian cases (the original files having long-ago been relegated to cyberspace) reveals the following:

PROCEDURAL HISTORY

CASE NO. 90CR038686

On May 8, 1990, the Defendant was indicted on this case for three (3) counts of Aggravated Vehicular Homicide (RC 2903.06(A)), felonies of the 4th degree and two (2) counts of Driving While Intoxicated (RC 4511.19(A)(1)&(2)), misdemeanors of the 1st degree. The date of the offense was **April 15, 1990**.

On November 2, 1990, the Defendant plead no contest and was found guilty of two (2) counts of "DUI" the Driving While Intoxicated charges. The three (3) Aggravated Vehicular Homicide charges, counts I, II, & III, were nolled due to a "reindictment" under Case No. 90CR039022. Interestingly, there is no record of the actual Plea Sheets relative to the plea; only a Journal Entry reflects what occurred.

On January 4, 1991, the Defendant was sentenced. For some inexplicable reason, the Defendant was sentenced on Count I, Aggravated Vehicular Homicide (3-10 years LCI); Count II, Aggravated Vehicular Homicide (3-10 years LCI); and Count IV, "DUI" (6 months LCCF). In addition, the Defendant's driving privileges were "permanently revoked."

As noted, the Defendant did not plead to, nor was he convicted of, Counts I or II, the Aggravated Vehicular Homicide charges as they were nolled and re-filed under Case No. 90CR039022.

CASE NO. 90CR039022

On July 31, 1990, the Defendant was indicted for three (3) counts of Involuntary Manslaughter (RC 2903.04(B)) and three (3) counts of Aggravated Vehicular Homicide (RC 2903.06(A)), all aggravated felonies of the 3rd degree.

On November 2, 1990, the Defendant plead guilty to the indictment. This plea is reflected by Plea Sheet "#1" that has typed-in information. In addition, however, the record contains Plea Sheet "#2" with hand-written information wherein the Defendant purportedly plead no contest to two (2) counts of RC 4511.19(A) "DUI" despite not being charged with those offenses.

On January 4, 1991, the Defendant was sentenced on this case (presumably at the same time that he was sentenced on Case No. 90CR038686) to "3 to 10 years consecutive to Case No. 90CR038686 in the LCI" on one of the Involuntary Manslaughter counts.[1] There is no sentence on the other two (2) Involuntary Manslaughter charges, the three (3) Aggravated Vehicular Homicide charges, or the two (2) purported "DUI" charges. In fact, the Sentencing Entry is entirely silent as to the two (2) other Involuntary Manslaughter charges, the three (3) Aggravated Vehicular Homicide charges, and the two (2) "DUI" charges.

The Defendant served his entire ten-year term of incarceration and was released. By all accounts, he has led a law abiding, even exemplary life since his release from prison and his bid to have his driving privileges restored is not opposed by the victims' family and is actually supported by a representative of M.A.D.D.

[1] It is difficult to tell exactly which Involuntary Manslaughter charge the court sentenced on – not that it much matters, I suppose.

To that end, beginning on January 11, 2002, the cavalcade of motions to restore driving privileges to the Defendant were filed; all, as noted, were denied.

LEGAL ANALYSIS

The gravamen of Defendant's most recent iteration for driving privileges relies upon R.C. 4510.54(A) for the proposition that ". . . a person whose 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." This statute became effective January 1, 2004 and was amended as recently as March 14, 2017.

IS THERE A DIFFERENCE BETWEEN A "REVOCATION" OR A "SUSPENSION"

A threshold question before the Court is the impact, if any, of the different terminology used by the General Assembly in 1991 when the Defendant was sentenced and the lexicon employed by the General Assembly today.

When the Defendant was sentenced on Case No. 90CR038686, his driving privileges were "permanently revoked." RC 4507.16, effective July 1, 1989, provided that a court, under certain situations, could "revoke" (or "suspend") a defendant's drivers license.

Today, the term "revoke" is no longer in use. Effective January 1, 2004, the General Assembly enacted RC 4510.02, "Definite Periods of Suspension – Suspension Classes," which created seven (7) classes of "suspensions" including the most severe, a Class (1) Suspension ". . . for the life of the person subject to the suspension."

As noted *supra,* the Defendant herein relies on RC 4510.54, also enacted January 1, 2004, for relief from his permanent driver's license "revocation." Not ironically, the statute does not reference "revocations" but only "suspensions."

Accordingly, is the statute even applicable? I find that it is.

Interestingly, an analysis of this query prior to 2004 would mandate a different result. In the matter of *State v. White,* 29 Ohio St.3d 39 (1987), writing for the Ohio Supreme Court's majority, Chief Justice Moyer said, "we note first that the General Assembly's use of both "suspend" and "revoke" implies that these terms are not synonymous. A review of other sections in R.C. Chapter 4507 reveals these terms are not used interchangeably * * * Thus, these terms should be afforded their common, everyday meaning. * * * The term "suspend" ordinarily contemplates the temporary taking away of something. "Revocation," however, is a permanent taking without the

expectation of reinstatement. Furthermore, R.C. 4507.16(A) provides that a license suspension is explicitly limited to a minimum term of thirty days up to a maximum term of three years. No such limiting phrase, however, follows the conjunctive phrase "or revoke." It is thus apparent that the General Assembly left to the discretion of the trial judge the length of time for a license suspension under R.C. 4507.16(A) within certain parameters and further granted the trial court judge the discretion to revoke the license." *Id.*

Again on January 1, 2004, however, the General Assembly enacted RC 4510.01 "License Suspension Definitions," and at Section "H," stated, ""Suspend" or "suspension" **means the permanent** or temporary withdrawal . . . of a driver's license . . . for the period of the suspension **or the permanent** or temporary withdrawal of the privilege to obtain a license . . ." (Emphasis added.)

Accordingly, the General Assembly essentially "preempted" *White* and merged the definition of "permanent revocation" and "life-time suspension" and as such, the Defendant may rely upon RC 4510.54 for relief.

See also: *State v. Lillstrung,* 6th Dist., 2007-Ohio-5744, holding "We are compelled to note that appellant is not without recourse. In 2004, the General Assembly passed R.C. 4510.54 which allows for motions for modification or termination of lifetime suspensions of driving privileges. Although the statute does not use the term 'revocation,' it is clear by a reading of the statute as well as R.C. 4510.01(H) that the statute does apply to individuals who have been penalized by a lifetime revocation of their driving privileges." *Id.* at ¶ 24. [2]

WAS THE DEFENDANT SUBJECT TO A "PERMANENT REVOCATION"

Notwithstanding the above, there is perhaps an even more compelling issue before the Court, to wit: Was the Defendant Subject to a Permanent Revocation in the first place?

Recall that when the Defendant was originally sentenced on January 4, 1991, his driving privileges were suspended on Case No. 90CR038686 only. The Sentencing Entry on Case No. 90CR039022 is silent as to any driver's license sanction.

Recall further that on Case No. 90CR038686 despite being (improvidently) sentenced to two (2) counts of Aggravated Vehicular Homicide, the Defendant only plead to and was convicted of two (2) counts "DUI," misdemeanors of the first degree.

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[2] The State urges that even if the statute is applicable to the Defendant, he is excluded from its application under R.C. 4510.54(F), which prohibits those whose driving privileges were revoked for violating R.C. 2903.08 from seeking redress. This argument is unconvincing as the Defendant's privileges were revoked for violating R.C. 4511.19, not R.C. 2903.08, as demonstrated *infra.*

Because the Defendant only plead to and was convicted of two (2) counts of misdemeanor "DUI," both his sentences of "3-10 years LCI" and "driving privileges 'permanently revoked'" were void *ab initio* and contrary to law.

The date of the offenses for the "DUI's" the Defendant was convicted of was April 15, 1990. At that time, RC 4507.16, "Suspension or Revocation of License; Occupation Driving Privileges" was in effect. That statute did not provide for a "permanent revocation" of an offender's driver's license for a misdemeanor "DUI" conviction.

To that end, absent finding prior convictions "within five years of the offense . . ." the driver's license suspension available under the statute was ". . . not less than sixty days nor more than three years." RC 4507.16(B)(1).

In fact, even if the court had made the appropriate findings of prior convictions, the maximum driver's license suspension available for a misdemeanor "DUI" conviction in the State of Ohio for an offense that occurred in 1990 was ". . . not less than one hundred eighty days nor more than ten years." RC 4507.16(B)(3).

Accordingly, in the case at bar, the Court had no authority to "revoke" but only to "suspend" the Defendant's driver's license on the misdemeanor "DUI" convictions. By any metric, the Defendant has served the entire term of any suspension the court could have legally imposed.

THE REMEDY

It is axiomatic that a completed sentencing entry is a final, appealable order. *See State v. McIntyre*, 9th Dist. Summit No. 27670, 2016-Ohio-93, ¶ 10 (listing the elements necessary for a final, appealable order in a criminal case). "Absent statutory authority, a trial court is generally not empowered to modify a criminal sentence by reconsidering its own final judgment. Once a final judgment has been issued pursuant to Crim.R. 32, the trial court's jurisdiction ends." *Id.* at ¶ 11.

However, trial courts do "retain continuing jurisdiction to correct a void sentence and to correct a clerical error in a judgment[.]" *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, ¶ 20. See also: *State v. Ivey,* 9th Dist., 2017-Ohio-4162.

As noted, *supra,* the court's imposition of a "permanent revocation" of the Defendant's driver's license was void *ab initio* because the court lacked the authority to permanently revoke the Defendant's driver's license or even impose a sanction in excess of ten years for the misdemeanor DUI convictions.

As if that was not enough, the inconsistencies, irregularities, and manifest errors in the Sentencing Entries in both Case No. 90CR038686 and Case No. 90CR039022 are stunning.

In the first case, the Defendant plead and was convicted of two (2) misdemeanor counts of "DUI" but was erroneously sentenced *to prison* on two (2) felony counts of Aggravated Vehicular Homicide, given "3-10 years LCI," and had his driving privileges "permanently revoked." These felony charges, recall, were *dismissed by the State* at the time of the plea!

In the second case, the Defendant plead to the indictment, three (3) counts of Involuntary Manslaughter and three (3) counts of Aggravated Vehicular Homicide but was sentenced on only one count of Involuntary Manslaughter! Apparently, the other five (5) counts were "forgotten" and no driver's license sanction was imposed.

Finally, the Court notes that at the oral hearing the State expressed concerns that the Court was considering matters "outside" of the pleadings in that the Defendant did not raise or argue the sentencing irregularities issues in his Motion but only that he was eligible for privileges pursuant to R.C. 4510.54. The State further opined that it was not given an opportunity to brief the issues the Court identified because they were not raised by the Defendant.

These arguments are without merit.

First, in preparing this matter for hearing and ruling, the Court took the time to actually review the record, including the indictments, the plea sheets, and the sentencing entries.[3] The irregularities were pointed-out to both the State and the Defendant, copies of a proposed order was given to the parties, and copies of all pertinent documents were made and distributed. This was done weeks before the hearing – as such, the State cannot in good-faith argue that it had no idea of these issues prior to the hearing.

Second, and more importantly, unlike an appellate court, this court is not constrained in its review of issues to only those advanced and preserved by the parties. "Trial judges are at the front lines of the administration of justice in our judicial system, dealing with the realities and practicalities of managing a caseload and responding to the rights and interests of the prosecution, the accused, and victims." *State v. Busch,* (1996), 76 Ohio St.3d 613 at ¶ 2.

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[3] Despite efforts by both the Court and the State, no transcript of proceedings for either the plea or sentencing hearings could be found.

A court has the "inherent power to regulate the practice before it and protect the integrity of its proceedings." *Royal Indemn. Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 33-34. "Trial courts deserve the discretion to be able to craft a solution that works in a given case." *Busch, supra.* See also: *Northland Ins. Co. v. Poulos,* 2007 WL 4696839, 7th Dist. CA No. 06 MA 160, "We note that *sua sponte* dismissals . . . are permissible." Citing, *State ex re. Edwards v. Toledo City Schools* (1995), 72 Ohio St.3d 106, 109.

CONCLUSION

Accordingly, for the foregoing reasons and for good-cause shown, the Defendant's Motion to Terminate or Modify Driver's License Suspension is well-taken and hereby GRANTED.

The order permanently revoking the Defendant's driver's license is vacated herewith and the Ohio BMV is hereby ordered to allow the Defendant to re-apply for an Ohio driver's license.

IT IS SO ORDERED.

JUDGE D. Chris Cook