Juvenile Law Case Summaries

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Court cannot suspend driver's license to age 19 for possession of marijuana [In re A.B.C.] (01-1-07).

On January 4, 2001, the Dallas Court of Appeals held that under Section 54.042 of the Family Code the juvenile court cannot suspend a driver's license to age 19 for the offense of possession of marijuana.

¶ 01-1-07. In the Matter of A.B.C., ___ S.W.3d, No. 05-00-00237-CV, 2001 WL 8857, 2001 Tex.App.Lexis ___ (Tex.App.--Dallas 1/4/01)[Texas Juvenile Law (5th Ed. 2000].

Facts: Appellant, A.B.C., a juvenile, was adjudicated delinquent. The trial court entered an order that, among other things, suspended or denied appellant's driver's license until his nineteenth birthday. On appeal, appellant complains of the length of the license suspension/denial. We modify the trial court's judgment in part, and affirm the trial court's judgment as modified.

Appellant pled true to an allegation that he engaged in delinquent conduct by possessing marijuana weighing two ounces or less in a drug free zone. See Tex. Health & Safety Code Ann. §§ 481.121(a), (b)(1), 481.134(f) (Vernon Supp.2000); Tex. Pen.Code Ann. § 12.21 (Vernon 1994). The trial court signed an order of adjudication and judgment of disposition with no placement, a condition of which ordered appellant's driver's license suspended or denied until his nineteenth birthday. (As appellant did not have a driver's license, the effect of the order was to deny him a license until he turned nineteen years of age.) The trial court also ordered appellant to participate in the Phoenix Project, a drug education program. The trial court denied appellant's motion for new trial challenging the length of the license denial, and appellant appealed. Section 54.042 refers to two categories of offenses that lead to mandatory license suspensions of differing lengths and conditions. See Tex. Fam.Code Ann. § 54.042 (Vernon Supp.2000). The two categories are defined by reference to two sections of the Transportation Code.

Held: Suspension order modified.

Opinion Text: The first category of offenses is defined by reference to Section 521.342(a) of the Transportation Code, and includes the following offenses:

(1) an offense under Section 49.04 or 49.07, Penal Code, committed as a result of the introduction of alcohol into the body;
(2) an offense under the Alcoholic Beverage Code, other than an offense to which Section 106.071 of that code applies, involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;
(3) a misdemeanor offense under Chapter 481, Health and Safety Code, for which Subchapter P [§§ 521.371-.377] does not require the automatic suspension of the license;
(4) an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug; or
(5) an offense under Chapter 484, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a volatile chemical.

TEX. TRANSP. CODE ANN. § 521.342(a) (Vernon Supp.1999) (footnote omitted) (emphasis added).

If the juvenile court finds the child engaged in conduct violating one of these enumerated offenses, section 54.042 of the Family Code provides that the court must suspend the child's driver's license "until the child reaches the age of 19 or for a period of

365 days, whichever is longer." Tex. Fam.Code Ann. § 54.042(a)(1), (c) (Vernon Supp.2000).

The second category of offenses under section 54.042 of the Family Code is defined by reference to section 521.372(a) of the Transportation Code, and includes the following offenses:

(1) an offense under the Controlled Substances Act;
(2) a drug offense; or
(3) a felony under Chapter 481, Health and Safety Code, that is not a drug offense.

TEX. TRANSP. CODE ANN. § 521.372 (Vernon 1999). The Transportation Code provides a mandatory suspension period for these offenses of 180 days. See id. § 521.372(c). In addition, the trial court may order the juvenile to attend an educational program approved by the Texas Commission on Alcohol and Drug Abuse designed to educate persons on the dangers of drug abuse. See TEX. TRANSP. CODE ANN. § 521.374(a) (Vernon 1999). In that case, the driver's license suspension/denial "continues for an indefinite period until the [juvenile] successfully completes the educational program." TEX. TRANSP. CODE ANN. § 521.374(b) (Vernon 1999). If the juvenile court finds the child engaged in conduct violating one of these enumerated offenses, it must notify the Department of Public Safety. Tex. Fam.Code Ann. § 54.042(a)(2) (Vernon Supp.2000).

Appellant pleaded guilty to possession of marijuana weighing two ounces or less in a drug free zone, a class A misdemeanor under the Texas Health and Safety Code. See Tex. Health & Safety Code Ann. §§ 481.121(a), (b)(1), 481.134(f) (Vernon Supp.2000); Tex. Pen.Code Ann. § 12.21 (Vernon 1994). Categorizing appellant's conduct within the statutory scheme set forth under section 54.041 of the Family Code, appellant violated the Controlled Substances Act and committed a drug offense within the meaning of the Transportation Code, both of which are enumerated in Transportation Code section 521.372(a). (In addition, section 521.342(a)(3) excludes these misdemeanors from those offenses for which a 365 day period of license suspension/denial period is required under Family Code section 54.042.) Therefore, appellant's offense falls within the second category of offenses referenced in section 54.042 of the Family Code, which (1) requires the trial court to notify the Department of Safety of appellant's adjudication; and (2) triggers the automatic denial or suspension of appellant's driver's license for a minimum 180 day period, continuing indefinitely until appellant successfully completes an educational program pursuant to section 521.374. See Tex. Transp. Code Ann. § 521.372(c) (Vernon 1999).

Appellant cites one case in support of his position: In Re R.S.J., a child, 999 S.W.2d 871 (Tex.App.-Tyler 1999, no writ). There the Tyler Court of Appeals concluded that, under nearly identical facts, section 54.042 did not authorize the trial court to deny a juvenile's driver's license until the age of nineteen, and that Transportation Code section 521.372 should have been applied instead to suspend/deny appellant's license for 180 days. See id. at 873-74. Based on our analysis, we agree with reasoning in In Re R.S.J.

The State concedes that if we apply the statutes literally the applicable period of suspension is 180 days and therefore, "the trial court's suspension of [a]ppellant's driver's license was improper." However, the State contends that the literal construction of the statutes produces an absurd result. Specifically, juvenile drug offenders will have their licenses suspended or denied for a shorter period of time than those who commit alcohol offenses or nondrug misdemeanors. Compare Tex. Fam.Code Ann. § 54.042 (Vernon Supp.2000), Tex. Transp. Code Ann. §§ 521.342, .372 with Tex. Transp. Code Ann. §§ 521.342-.345, (Vernon 1999 and Supp.2000). The State urges this Court to depart from the plain meaning rule, rewrite the statutes, and avoid this "patently absurd" result. See Boykin v. State, 818 S.W.2d 782, 785 (Tex.Crim.App.1991) (holding exception to plain meaning rule exists "where application of a statute's plain language would lead to absurd consequences that the Legislature could not possibly have intended...."); Cramer v. Sheppard, 140 Tex. 271, 167 S.W.2d 147, 155 (1942) (same exception).

The state relies upon Matchett v. State, 941 S.W.2d 922 (Tex.Crim.App.1996) and Cook v. State, 902 S.W.2d 471 (Tex.Crim.App.1995). These cases contemplate consequences more severe than the anomaly in the case at bar, and are therefore distinguishable. In Matchett, the Court of Criminal Appeals found harmless the trial court's failure to admonish the defendant in a capital murder trial as required by article 26.13(a)(2), (3), and (4), Texas Code of Criminal Procedure. See Matchett 941 S.W.2d at 929; Tex.Code Crim. Proc. Ann. art. 26.13 (Vernon Supp.2000). The court applied the Boykin exception to the plain meaning rule, stating: "It would be an absurd result ... to allow a defendant's conviction on a plea of guilty or nolo contendere to be reversed on appeal for failure to give [admonishments which were] legally inapplicable to [the defendant]." Matchett, 941 S.W.2d at 930. In Cook, the Court of Criminal Appeals held that to constitute an indictment a charging instrument was required to charge "a person." Cook, 902 S.W.2d at 479-80. The court had refused to construe article V, section 12(b) of the Texas Constitution literally because such construction "clearly leads to an absurd result." Id. at 479. Specifically, if construed literally, article V, section 12(b) would "subject all requisites of an indictment to the scope of art. 1.14(b), and hence, to waiver.... [T]his construction of art. V, § 12(b) would permit a blank sheet of paper to suffice for a valid

indictment." Id.

The disparity of punishment in the statutory scheme applicable to case at bar does not rise to the level of unreasonableness contemplated by the term "absurd." See e.g., Basden v. State, 897 S.W.2d 319, 321 (Tex.Crim.App.1995) ("Giving effect to the plain meaning of Article 42.08(b) [Texas Code of Criminal Procedure] would lead to the absurd result of permitting inmates to commit crimes without fear of punishment...."). Because the statutory 180 day mandatory license suspension is not the only penalty that can be imposed when a child is found to be "in need of rehabilitation" (or when disposition is required for the protection of the public or the child), see e.g., Tex. Fam.Code Ann. §§ 54.04 (probation); 54.044 (community service); 54.047 (mandatory community service for alcohol offenders) (Vernon Supp.2000), the rehabilitation/punishment scheme embodied in the literal meaning of the applicable statutes is not patently absurd. We need not depart from the plain meaning of these statutes, which resolve the issue. We conclude that to the extent the trial court ordered the suspension or denial of appellant's driver's license under Family Code section 54.042(a)(1), (c), the judgment is void. We sustain appellant's point of error. Accordingly, we modify the judgment of the trial court to reflect that the period of license denial is 180 days after the date appellant applies to the department for reinstatement or issuance of a driver's license, and continuing for an indefinite period thereafter until appellant successfully completes the Phoenix Program. No other point of error being raised we affirm the trial court's judgment as modified.

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