No. 2—10—0184
Order filed March 3, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Boone County.
Plaintiff-Appellant,	)	
v.	)	No. 08—CF—289
JOHN V. FREDIN,	)	Honorable John H. Young,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: The trial court erred in dismissing a charge of aggravated driving with a suspended license, in reliance on an earlier order purporting to rescind the suspension *ab initio* such that the suspension was not in effect at the time of the present offense; a suspension may be rescinded only prospectively, so the earlier order was erroneous; thus, the suspension was in effect at the time of the present offense.

The State appeals the trial court's dismissal of a charge of aggravated driving with a suspended license (DWS) (625 ILCS 5/6—303(d) (West 2008)) against defendant, John V. Fredin. The State contends that the trial court erred by relying on an unappealed order in an unrelated case

purporting to rescind *ab initio* the statutory summary suspension of defendant's driver's license. The State argues that the earlier order was void as beyond the court's authority. We reverse and remand.

Defendant was charged in Boone County with aggravated DWS. He moved to dismiss the charge, contending that the Winnebago County circuit court had declared the suspension void *ab initio* and that defendant's driver's license was thus valid at the time of his arrest. The factual background leading to this situation is as follows.

On April 26, 2008, defendant was arrested in Winnebago County and charged with driving under the influence of alcohol. He was transported to the Cherry Valley police station, where he was read the Warning to Motorist at 11:40 p.m. He submitted to a breath test at 11:56 p.m., but was not immediately served with a notice of summary suspension. At 11:58 p.m., the arresting officer, Thomas Hogshead, read defendant the *Miranda* warnings and began to question him about the offense. Hogshead's report noted that the interview began around 11:59 p.m. and ended several minutes later. Hogshead then wrote an additional citation, filled out the Law Enforcement Sworn Report, and completed the Warning to Motorist form. Consequently, defendant was not served with a notice of summary suspension until sometime after midnight on April 27, 2008.

A summary suspension begins on the 46th day after a motorist receives the notice of suspension. 625 ILCS 5/11—501.1(g) (West 2008). The 46th day after April 27 would have been June 12. However, because Hogshead's report showed that defendant was arrested on April 26, the Secretary of State notified defendant that his license would be summarily suspended beginning June 11, 2008.

In May 2008, defendant petitioned the Winnebago County court to rescind the statutory summary suspension. On June 11, 2008, defendant was arrested in Boone County for DWS.

On March 12, 2009, the Winnebago County court granted defendant's petition to rescind the summary suspension. The court's order declared that it was *nunc pro tunc*. On August 7, 2009, the Winnebago court entered a supplemental order stating that the summary suspension was void *ab initio* and that the petition to rescind was granted *nunc pro tunc* and retroactively to 12:01 a.m., June 11, 2008.

Defendant then moved to dismiss the DWS charge in Boone County, arguing that the Winnebago court's order had retroactively rescinded the suspension. The trial court, finding that it was bound by the Winnebago County order, granted the motion. The State appeals.

The State contends that the court below erred in relying on the Winnebago court's order. The State argues that a rescission of a summary suspension may only operate prospectively and, thus, the Winnebago court's order was void as beyond its authorization.

We note that defendant has not filed a brief in this court. However, we will consider the merits of the appeal under the standard set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

If a motorist's driving privileges are summarily suspended, the motorist may request a judicial hearing seeking rescission of that suspension. 625 ILCS 5/2—118.1 (West 2008); *People v. Tomczak*, 395 Ill. App. 3d 877, 880 (2009). However, courts have uniformly held that a rescission operates prospectively only.

In *People v. Ciechanowski*, 379 Ill. App. 3d 506 (2008), the defendant was charged with aggravated driving under the influence (DUI). The offense was aggravated because, at the time, his license had been summarily suspended following a previous DUI arrest. However, the court in the first DUI case subsequently rescinded the summary suspension. Following his conviction in the

second case, defendant appealed, arguing that he could not be convicted of aggravated DUI because the rescission in the first case rendered the summary suspension void *ab initio*. The appellate court disagreed, holding that the rescission operated prospectively only. The court noted that "because the Secretary of State has the authority to enter statutory summary suspensions [citations] and because even an improper statutory summary suspension will take effect unless and until the defendant acts to annul it [citation] we cannot say that an improper suspension is void *ab initio*. Rather, an improper statutory summary suspension is merely voidable." *Id.* at 515-16.

Ciechanowski cited *People v. Focia*, 287 Ill. App. 3d 767 (1997). There, the defendant was charged with DUI and her license was summarily suspended. She petitioned to rescind the suspension but, before the petition was heard, she was ticketed for driving on a suspended license. The suspension was later rescinded by agreement. The trial court granted the defendant's motion to dismiss the DWS charge, holding that the rescission applied retroactively. The appellate court reversed. Justice Slater's lead opinion stated that where "the defendant does not obtain a hearing before the suspension takes effect, we find that any subsequent rescission should not be applied retroactively. To hold otherwise would condone the defendant's disregard of the law." *Id.* at 769.

A judgment is void where the court entering it lacked jurisdiction over the parties or the subject matter, or exceeded its authority to act. *People v. Rodriguez*, 355 Ill. App. 3d 290, 296 (2005). The last-named criterion clearly applies here. The Secretary of State is authorized to suspend driver's licenses. *Ciechanowski*, 379 Ill. App. 3d at 515. Although a court may rescind a summary suspension, a rescission applies only prospectively. *Id* at 515-16. Thus, the Winnebago County court exceeded its authority by purportedly declaring the summary suspension void *ab initio*. Accordingly, the Boone County court erred by deferring to the earlier order. As defendant's driver's

license was in fact suspended on June 11, 2008, and the suspension could not be rescinded retroactively, the DWS charge should not have been dismissed.

Reversed and remanded.