

SECOND DIVISION
May 17, 2016

No. 1-13-3942

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
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 CR 4560
)	
RONALD MURRELL,)	Honorable
)	James B. Linn,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

O R D E R

¶ 1 **Held:** The trial court's order reducing the instant offense of felony driving while license is suspended or revoked to a misdemeanor is reversed and remanded for further proceedings, because the prior revocation of defendant's driving privileges did not render his subsequent statutory summary suspension a nullity for purposes of the instant enhanced driving while license was suspended or revoked charges.

¶ 2 Defendant Ronald Murrell was charged by indictment with driving while license was suspended or revoked (625 ILCS 5/6-303(a) (West 2010)). The offense was charged as a Class 2

felony pursuant to section 6-303(d-5) of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(d-5) (West 2010)). The State appeals from an order of the circuit court of Cook County modifying the indictment by reducing the charge to a misdemeanor. We reverse and remand.

¶ 3 The indictment alleged that on or about October 19, 2011, defendant "drove or was in actual physical control of a motor vehicle, on any highway of this state, at a time when his driver's license, permit or privilege to operate a motor vehicle was revoked ***, in violation of Chapter 625, Act 5, Section 6-303(a)" of the Code. See 625 ILCS 5/6-303(a) (West 2010)). The indictment further alleged that the State sought to sentence defendant as a Class 2 offender pursuant to section 6-303(d-5) of the Code (625 ILCS 5/6-303(d-5) (West 2010)), because defendant had been previously convicted of 14 or more violations of section 6-303.

¶ 4 Defendant filed a motion to dismiss.¹ At the hearing on the motion, defendant relied on *People v. Heritsch*, 2012 IL App (2d) 090719, for the proposition that because his driver's license had been suspended on other grounds prior to a statutory suspension for driving under the influence (DUI), the second revocation was a nullity and could not serve as the basis upon which to enhance the offense classification and sentence in the instant case. The record reveals that defendant's driver's license was revoked in 1982 because he had committed three traffic offenses in the same year. It was never reinstated. In 1999, defendant was arrested for DUI which resulted in the statutory summary suspension and revocation of his driver's license.

¶ 5 The trial court concluded that it was bound by *Heritsch* and ordered the indictment amended so as to reduce the charged offense to a misdemeanor. The State filed a motion to

¹ Although a copy of this motion is not included in the record on appeal, it is included in the appendix to the State's brief.

reconsider, which the trial court denied. The State subsequently filed a certificate of substantial impairment, and a notice of appeal.

¶ 6 Pursuant to section 6-303(a) of the Code (625 ILCS 5/6-303(a) (West 2010)), "any person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so or the privilege to obtain a driver's license or permit is revoked or suspended as provided by this Code, ***, shall be guilty of a Class A misdemeanor."

¶ 7 In this case, defendant was charged with a Class 2 felony pursuant to section 6-303(d-5), because defendant's driving privileges had previously been revoked for a violation of section 11-501, and defendant had previously been convicted of 14 or more violations of section 6-303. See 625 ILCS 5/11-501 (West 2010), 625 ILCS 5/6-303 (West 2010), 625 ILCS 5/6-303(d-5) (West 2010).

¶ 8 On appeal, the State challenges the proposition that a motorist's driving privileges, having once been revoked, cannot thereafter be suspended or "re-revoked," unless first reinstated through the issuance of a new permit or license. The State recognizes that this argument is contrary to the holding of *Heritsch*, but contends that *Heritsch* was incorrect, and urges this court to follow the reasoning of *People v. Smith*, 2013 IL App (2d) 121164. Defendant contends that the trial court properly followed the holding of *Heritsch* when it determined that the plain language of the Code permits a driver's license to be "revoked" only when there is such a license to be revoked.

¶ 9 The issue on appeal is whether, under the driving while license is suspended or revoked law, driving privileges that have been revoked are subject to statutory summary suspension while the revocation remains in effect. This is an issue of statutory construction.

¶ 10 Issues of statutory construction are questions of law subject to *de novo* review. *People v. Lloyd*, 2013 IL 113510, ¶ 25. When construing a statute, a reviewing court's primary objective is to ascertain and give effect to the legislature's intent, giving the language of the statute its plain and ordinary meaning. *Id.* If the statute's language is clear and unambiguous, a court may not depart from that language by incorporating exceptions or conditions that the General Assembly did not express. *Wilkins v. Williams*, 2013 IL 114310, ¶ 22. "However, the task of interpreting the language of a statute cannot always be reduced to 'the mechanical application of the dictionary definitions of the individual words and phrases involved,' " and a reviewing court should not "read statutory language in an overly literal manner." *People v. Wood*, 379 Ill. App. 3d 705, 708-09 (2008), quoting *Whelan v. County Officers' Electoral Board*, 256 Ill. App. 3d 555, 558 (1994).

¶ 11 Pursuant to section 1-176 of the Code, the "revocation" of a driver's license means "[t]he termination by formal action of the Secretary of a person's 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 Secretary after the expiration of at least one year after the date of revocation." 625 ILCS 5/1-176 (West 2010).

¶ 12 In the case at bar, the trial court relied on *People v. Heritsch*, 2012 IL App (2d) 090719. In that case, the defendant was convicted of aggravated driving with a revoked or suspended

license (625 ILCS 5/6-303(d-5) (West 2008)), and was sentenced as a Class X offender (see 730 ILCS 5/5-5-3(c)(8) (West 2008)). On appeal, the defendant argued that the State failed to prove the aggravating factor, *i.e.*, that his driver's license had been revoked for a violation of section 11-501 of the Code (625 ILCS 5/11-501 (West 2008)), at the time of the instant offense. The defendant contended that his driver's license had been revoked continuously since 1991, and that its "revocation" was due to a drug offense rather than a DUI. *Id.* ¶ 6.

¶ 13 Although the defendant's driving abstract reflected that his driver's license had been revoked in 2001, it was undisputed that his license had been "revoked continuously" since 1991. *Id.* ¶¶ 6, 9. The court concluded that because "a revoked driver's license remains revoked until a new license is issued," the 2001 revocation of defendant's previously revoked license had no effect because defendant had never obtained a new license. *Id.* ¶ 9. The court acknowledged that this conclusion "appears to place [the] defendant in a better position than he would have been had his license not been revoked until 2001, after he committed DUI." *Id.* ¶ 11. However, it held that because the plain language of section 6-303(d-5) "speaks of '*the* revocation or suspension,'" the statutory language implied that there is only one pertinent triggering event. (Emphasis in original.) *Id.* ¶ 10, quoting 625 ILCS 5/6-303(d-5) (West 2008).

¶ 14 We note that although the trial court was required to follow *Heritsch*, as it was the only relevant appellate court precedent at the time, we are not. See *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008) (the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels). Rather, we find the reasoning of *People v. Smith*, 2013 IL App (2d) 121164 and *People v. Webber*, 2014 IL App (2d) 130101, more persuasive.

¶ 15 In *People v. Smith*, 2013 IL App (2d) 121164, the defendant was charged with, *inter alia*, driving while his license was suspended. See 625 ILCS 5/6-303(a) (West 2012). The offense was charged as a Class 2 felony pursuant to section 6-303(d-5) (625 ILCS 5/6-303(d-5) (West 2012)), because the defendant operated a motor vehicle at a time when his driver's license was suspended or revoked for a violation of section 11-501 (see 625 ILCS 5/11-501 (West 2012)), and he had fourteen or more prior violations for the offense of driving while license was revoked or suspended. The indictment was subsequently amended to allege that the defendant was driving while a statutory summary suspension of his license (see 625 ILCS 5/11-501.1 (West 2012)), was in effect. The defendant moved to dismiss, relying on an abstract of his driving record to establish that the statutory summary suspension was entered at a time when his driver's license had already been revoked. The defendant argued, relying on *Heritsch*, that the statutory summary suspension was a nullity. He also argued that his license had been revoked for a reason other than those listed in section 6-303(d-5) as a prerequisite for enhancing the charged offense to a felony. The trial court agreed, but rather than dismissing the charges, it ordered the State to amend the charge to a misdemeanor. On appeal, the State argued that *Heritsch* was wrongly decided.

¶ 16 The *Smith* court observed that the question before it was one of statutory interpretation, and that when the language of a statute is clear and unambiguous, a court may not depart from the language *Id.* ¶¶ 8-9. However, the court also noted that " [a] literal interpretation is not controlling where the spirit and intent of the General Assembly in enacting a statute are clearly expressed, its objects and purposes are clearly set forth, and a literal interpretation of a particular clause would defeat the obvious intent [citation]; where literal enforcement of a statute will result in great injustice that was not contemplated by the General Assembly [citation]; or where a

literal interpretation would lead to an absurd result [citation].' " *Id.* ¶ 9, quoting *Grever v. Board of Trustees of the Illinois Municipal Retirement Fund*, 353 Ill. App. 3d 263, 266-67 (2004).

¶ 17 The court then stated that if the statutory definition of "revocation," that is, "the termination * * * of a person's license or privilege to operate a motor vehicle" (see 625 ILCS 5/1-176 (West 2012)), "is given its most literal meaning, the argument that revocation is a singular occurrence might appear to be an ontological truism: after one's license or privilege to operate a vehicle is terminated, it no longer exists and therefore cannot again be terminated." *Id.* ¶ 11. However, the court concluded that an examination of the Code led to the "reasonably clear" conclusion that "revocation" was used as a term of art that referred to a formal act by the Secretary and the resulting legal consequences. *Id.* Therefore, section 6-205(a) (625 ILCS 5/6-205(a) (West 2012)), placed no limitation on the number of times the Secretary may revoke a driver's license or expressly limited revocation to cases where no prior revocation was in effect. *Id.* ¶ 11.

¶ 18 Accordingly, the *Smith* court concluded that "when a motorist's driving privileges are subject to statutory summary suspension ***, the suspension is valid notwithstanding any prior revocation or suspension of the motorist's driving privileges" and, therefore, such a suspension may be the basis for an enhanced penalty for violations of section 6-303(a) while the suspension is in effect. *Id.* ¶ 6. Accord *People v. Webber*, 2014 IL App (2d) 130101, ¶¶ 1, 14 (rejecting the defendant's argument, based upon *Heritsch*, that because his driver's license was revoked in 1996 and never reissued, a subsequent revocation for DUI was of no effect and could therefore not be the basis for charging him with felony driving while license was revoked).

¶ 19 Both the *Smith* and *Webber* courts noted that the General Assembly amended section 6-303 of the Code, by adding subsection (a-10), which provides:

"A person's driver's license, permit, or privilege to obtain a driver's license or permit may be subject to multiple revocations, multiple suspensions, or any combination of both simultaneously. No revocation or suspension shall serve to negate, invalidate, cancel, postpone, or in any way lessen the effect of any other revocation or suspension entered prior or subsequent to any other revocation or suspension." Pub. Act 98-418, § 5 (eff. Aug. 16, 2013); Pub. Act 98-573, § 5 (eff. Aug. 27, 2013). See *Smith*, 2013 IL App (2d) 121164, ¶ 17; *Webber*, 2014 IL App (2d) 130101, ¶ 12.

¶ 20 The *Smith* and *Webber* courts determined that the General Assembly drafted this amendment to clarify its intent and to express its disagreement with the statutory interpretation advanced in *Heritsch*. *Smith*, 2013 IL App (2d) 121164, ¶ 17; *Webber*, 2014 IL App (2d) 130101, ¶ 13. See also *In re Detention of Lieberman*, 201 Ill. 2d 300, 323 (2002), quoting 1A Singer, *Sutherland on Statutory Construction* § 22.31, at 379-80 (6th ed. 2000)) (" 'An amendment, which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute.' ").

¶ 21 Recently, in *People v. Viverette*, 2014 IL App (1st) 122954, we discussed *Heritsch*, *Smith* and *Webber* and determined that "it is clear that the legislature intended to increase the class of offense and the resultant penalty to varying degrees based on the number of prior convictions for DWLR." *Id.* ¶ 19. Accordingly, our discussion in *Viverette* is applicable to the issue involved in this appeal.

¶ 22 In conclusion, we adhere to our discussion in *Viverette* and the reasoning and decisions in *Smith* and *Webber* and we decline to follow *Heritsch*. We find that the prior revocation of defendant's driving privileges in the instant case did not render his subsequent statutory summary suspension a nullity for purposes of the enhanced driving while license was suspended or revoked charges. See *People v. Blair*, 2015 IL App (4th) 130307, ¶ 30 (Jun. 30, 2015) (relying on *Smith* and *Webber* to find the prior revocation of the defendant's driving privileges did not render his subsequent statutory summary suspension a nullity for purposes of the enhanced driving while license was suspended or revoked charges). Consequently, the trial court erred when it granted defendant's motion to dismiss the felony charge and ordered that the charge be amended to a misdemeanor. Accordingly, we reverse the judgment of the circuit court of Cook County and remand for further proceedings not inconsistent with this order.

¶ 23 Reversed and remanded.