

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MARCH SESSION, 1995

FILED

December 6, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

CHARLES GLENN STEVENSON)

Appellant)

vs.)

STATE OF TENNESSEE,)

Appellee)

No. 01C01-9412-CC-00426

ROBERTSON COUNTY

Hon. **James E. Walton**, Judge

(Violation of the Motor Vehicle
Habitual Offenders Act)

For the Appellant:

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For the Appellee:

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Charles Glenn Stevenson, entered a conditional plea of nolo contendere to one count of violating the Motor Vehicle Habitual Offenders Act in the Circuit Court of Robertson County. The appellant expressly reserved the right to appeal the following certified question of law:

Does Tennessee Code Annotated § 28-3-110 bar prosecution of an offense of driving a motor vehicle occurring on August 27, 1993, when the order declaring the defendant an habitual traffic offender was more than ten years old (dated May 23, 1983) on the date of the offense?

After a review of the record, we affirm the judgment of the trial court.

On May 23, 1983, the appellant was declared an habitual motor vehicle offender in the Circuit Court of Robertson County. On August 27, 1993, and on December 14, 1993, the appellant was stopped by law enforcement officers while operating a vehicle in Robertson County. He was subsequently indicted on two counts of violating the Motor Vehicle Habitual Offenders Act.¹ The appellant filed a motion to dismiss the indictment, which was denied by the trial court. The appellant, pursuant to a plea agreement, entered a plea of nolo contendere to one count of violating the Act, reserving the certified question of law for appeal. In accordance with the plea agreement, the appellant received a two year sentence of incarceration.

The appellant contends that because actions under the Motor Vehicle Habitual Offenders Act are civil in nature, the civil statute of limitations should apply. Tenn. Code Ann.. § 28-3-110 (1980) provides:

The following actions shall be commenced within ten (10) years after the cause of action accrued:

. . .
(2) Actions on judgments and decrees of courts of record of

¹Tenn. Code Ann. § 55-10-601 et. seq. (1993).

this or any other state or government. ...

This statute operates to limit the length of time that an action to enforce a final judgment previously obtained in a civil action may be filed in Tennessee without the judgment having been previously revived. See, e.g., Warren v. Haggard, 803 S.W.2d 703 (Tenn. Ct. App. 1990). Thus, the appellant's position is that the order barring his driving became unenforceable after ten years and was, therefore, not in effect when he was arrested. If correct, his prosecution would arguably be limited to driving without a license.

The appellant is correct in pointing out that the action declaring a person an habitual motor vehicle offender is civil in nature. See Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991). However, Tenn. Code Ann. § 55-10-616(a) (1993) provides that "[i]t is unlawful for any person to operate any motor vehicle in this state while the judgment or order of the court prohibiting the operation remains in effect." Nevertheless, in furtherance of his argument, the appellant contends that the phrase "remains in effect" must be applied in conjunction with the ten year civil statute of limitations. Thus, he contends that no prosecution may commence after a period of ten years.

In Tenn. Code Ann. § 55-10-602 (1993), the legislature stated the public policy behind the habitual offender act, essentially noting the need to provide safe streets and highways and the need to bar dangerous drivers in order to increase highway safety. Therefore, pursuant to Tenn. Code Ann. § 55-10-613(a) (1993), upon finding a person to be an habitual offender, the trial court "shall make an order directing that such person shall not operate a motor vehicle on the highways of this state and that such person shall surrender to the court all licenses to operate a motor vehicle upon the highways of this state." Unquestionably, the order barring the person from driving because of an habitual offender status is in the nature of a permanent injunction upon a declaration of

status that is intended to continue until it is removed by court order. Therefore, we conclude that section 28-3-110 does not operate to limit a permanent injunction's enforceability to ten years. See e.g., H. Gibson, *Gibson's Suits in Chancery*, § 574 (W. Inman 7th ed. 1988) (permanent injunction is a perpetual restraint).

Thus, the continuing effectiveness of an order prohibiting driving because of a declared habitual motor vehicle offender status is not limited by section 28-3-110 to ten years from the date the order is entered. Instead, as indicated in Tenn. Code Ann. § 55-10-615(b) (1993), relief from the order is to be obtained through court-ordered restoration of the privilege to operate a motor vehicle in this state. See *State v. Orr*, 694 S.W.2d 297 (Tenn. 1985). In *Orr*, our supreme court held that the "suspension of driving privileges will remain in effect until such a petition [for reinstatement] is filed and the court acts favorably thereon." *Id.* at 298; accord *State v. Tate*, No. 02C01-9306-CC-00113 (Tenn. Crim. App. at Jackson, Feb. 23, 1994). The appellant's argument is without merit.

The judgment of the trial court is affirmed.

David G. Hayes, Judge

CONCUR:

Jerry Scott, Presiding Judge

Joseph M. Tipton, Judge