

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER 1994 SESSION

FILED

November 8, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,
Appellee

vs.

CATHY R. ROSE,
Appellant

No. 03C01-9407-CR-00268

BLOUNT COUNTY

Hon. D. Kelly Thomas, Jr., Judge

(Driving on Revoked License)

FOR THE APPELLANT:

Mack Garner
District Public Defender
318 Court Street
Maryville, TN 37801

Natalee S. Hurley
Asst. Public Defender
318 Court Street
Maryville, TN 37801

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter

Sharon S. Selby
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

Mike Flynn
District Attorney General

Phillip H. Morton
Asst. Dist. Attorney General
Blount County Courthouse
Maryville, TN. 37801

OPINION FILED: _____

AFFIRMED

Robert E. Burch
Special Judge

OPINION

This is an appeal of right from a bench trial which resulted in appellant's conviction of the offense of driving a motor vehicle at a time when the privilege so to do was canceled, suspended or revoked.

Apparently believing the Tennessee Rules of Appellate Procedure to be advisory, counsel for appellant attached to her brief a stipulation of facts agreed upon by trial counsel instead of filing a statement of the evidence with the clerk of the trial court as required by Rule 24 T.R.C.P. The state properly objected to this procedure. By order of the court, the statement of facts was stricken. Counsel is admonished to comply in the future with the rules of this Court.

Even so, we are able to glean sufficient facts from the record to rule upon appellant's issue which she presents for review.

While the exhibits have not been authenticated by the trial judge, they are contained in the record. No objection to their inclusion has been made. Exhibit #2 demonstrates that the Department of Safety revoked appellant's driver's license on or about September 13, 1991. By the same document, appellant was informed that she could apply to have her driver's license reinstated on or after September 10, 1992.

Appellant insists that her period of suspension had not begun to run because the Court of General Sessions did not physically take her driver's license. In support of her argument, appellant cites T.C.A. §55-50-502(e)(2) which provides that if a driver's license is suspended because of a DUI conviction, the period of suspension begins with the actual taking of the driver's license from the possession of the affected person.

Assuming ab arguendo this to be true, we are constrained to

point out that this language is contained in the Code section dealing with the discretionary (“...is hereby authorized to...”) **suspension** of driver’s licenses by the Department of Safety. T.C.A. §55-50-502(a). A suspension is the temporary withdrawal of driving privileges, after which period of suspension the license may be returned. T.C.A. §55-50-102(47).

The procedure which was followed by the Department of Safety in the case sub judice was that contained in T.C.A. §55-50-501 et seq. Under this section, the Department of Safety is required to revoke (“...shall forthwith revoke...”) the driver’s license of any person who is inter alia convicted of DUI. A revocation is the termination of driving privileges after which a person may not drive without obtaining a new license. T.C.A. §55-50-102(42).

Exhibit #2 makes it quite plain that the Department of Safety proceeded under T.C.A. §55-50-501 et seq to revoke appellant’s license.

A code section should not be read in isolation. It must be read in pari materia with the remaining portions of the subchapter in which it is found. When this is done, it is obvious that the cited code section has no application to the procedure followed by the Department of Safety in this case.

Appellant insists that “suspension” and “revocation” are interchangeable and synonymous. This is misplaced. The difference in the terms is clear and the procedures to effectuate each is different.

Appellant relies upon a Code section which does not affect the procedure used to revoke her driving privileges.

The judgement of the trial court is affirmed.

Robert E. Burch,
Special Judge

CONCUR:

Gary R. Wade, Judge

Joseph M. Tipton, Judge