

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE 1998 SESSION

FILED

June 17, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

V.

TERRON PAUL BORDEN,

Appellant.

)
) C.C.A. No. 02C01-9802-CC-00050
)
) McNairy County
)
) Honorable Jon Kerry Blackwood, Judge
)
) (Violation of HMVO Order)
)
)

FOR THE APPELLANT:

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OPINION FILED: _____

REVERSED AND DISMISSED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Terron Paul Borden, was arrested on February 28, 1997, in McNairy County for driving on a revoked license, speeding, and violation of the Motor Vehicle Habitual Offenders Act (HMVO). He retained a lawyer. Counsel appeared with him in the McNairy County General Sessions Court on April 18, 1997. Plea negotiations ensued. The appellant entered a guilty plea to driving on a revoked license. He waived his right to a preliminary hearing on the HMVO charge. A true bill of indictment was returned by the McNairy County Grand Jury on the HMVO charge on June 9, 1997.

The appellant filed a motion to dismiss in the McNairy County Circuit Court based on double jeopardy provisions. The trial court denied the motion to dismiss. After plea negotiations concluded, the appellant entered a guilty plea to the HMVO violation but reserved the right to appeal a certified question of law pursuant to Rule 37(b) of the Tennessee Rules of Criminal Procedure. The appellant perfected his appeal to this Court.

The issue before this Court is simple. Under the provisions of State v. Green, 947 S.W.2d 186 (Tenn. Crim. App. 1997), can the appellant be convicted of both driving on a revoked license and a violation under HMVO? We conclude that he cannot be convicted of both crimes.

In Green, this Court found that driving on a revoked license is not a lesser included offense of violating the habitual motor vehicle law. We further found that under the provisions of Duchac v. State, 505 S.W.2d 237 (Tenn. 1973), these two offenses are the “same” for double jeopardy purposes under the Tennessee Constitution. The Court found that under the principles enunciated in State v. Denton, 938 S.W.2d 373 (Tenn. 1996), double jeopardy principles were

violated; and a defendant could not be convicted of both driving on a revoked license and a violation of HMVO.

The Attorney General concedes this issue. The state agrees that convicting this appellant of both crimes violates double jeopardy provisions.

The judgment of conviction of violation as a habitual offender under the Motor Vehicle Habitual Offenders Act (HMVO) is reversed, and the indictment is dismissed.

PAUL G. SUMMERS, Judge

CONCUR:

DAVID H. WELLES, Judge

JOE G. RILEY, Judge