

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL SESSION, 1998

<p>FILED</p> <p>April 23, 1998</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

STATE OF TENNESSEE

Appellee,

VS.

TRACY C. THOMPSON,

Appellant.

) C.C.A. NO. 01C019707-CR-00271
)
) DAVIDSON COUNTY
)
) (No. H.O. 258)
)
) The Hon. Frank G. Clement, Jr.
)
) (Habitual Motor Vehicle Offender)

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ON APPEAL:

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OPINION FILED _____

AFFIRMED

THOMAS T. WOODALL, JUDGE

OPINION

The defendant, Tracy C. Thompson, appeals as of right pursuant to T.R.A.P. 3 from the order of the trial court finding him to be a habitual motor vehicle offender. T.C.A. § 55-10-603. The defendant argues that the trial court erred by considering two convictions entered on January 20, 1995, as separate convictions under the Motor Vehicle Habitual Offender Act. We disagree and affirm the judgment of the trial court.

The underlying facts are not in dispute. While the dates are not included in the record, the defendant concedes that he committed three motor vehicle offenses on three separate dates. The defendant was convicted of driving under the influence of an intoxicant, first offense, on September 18, 1992, and he was convicted of two counts of driving under the influence of an intoxicant, second offense, on January 20, 1995. Subsequently, on September 24, 1996, the state filed a petition to enforce the motor vehicle habitual offender act. After a hearing, the trial court declared the defendant to be a habitual motor vehicle offender on January 27, 1997. The defendant argues that because two of his convictions were entered on the same date, they cannot be considered as separate convictions in determining whether the defendant qualifies as a habitual motor vehicle offender.

Pursuant to T.C.A. § 55-10-603(2)(A), a "Habitual offender" is defined as any person who, during a three-year period, is convicted in a Tennessee court(s) of three or more certain enumerated offenses, any person who, during a five-year period, is convicted in a Tennessee court(s) of three or more certain enumerated offenses, or any person who, during a ten-year period, is convicted in a Tennessee court(s) of five or more certain enumerated offenses.

In computing the number of offenses, T.C.A. § 55-10-604 provides:

- (a) Only convictions which result from offenses committed after April 5, 1974, shall be counted for the purposes of this part.

The entry of any conviction more than sixty (60) days after April 5, 1974, creates a rebuttable presumption that the offense was committed after April 5, 1974.

- (b) Where more than one (1) included offense is committed within a one (1) day period, all such offenses in such one (1) day period shall be treated for the purposes of this part, as not more than one (1) offense.
- (c) For the purposes of making the computation of convictions, the date of entry of conviction in the court of original jurisdiction shall control, except that offenses committed during the applicable period with regard to which convictions are imposed shall also be counted, even though such convictions are not actually entered on the records of the courts imposing them within the applicable period.
- (d) The start of the applicable period is the date of entry of conviction in the court of original jurisdiction of the first offense to be counted.

When a statute is unambiguous on its face, it is incumbent upon the judiciary to defer to the plain, ordinary, commonly understood meaning of the statute. See Mercy v. Olsen, 672 S.W.2d 196, 198 (Tenn. 1984); State v. Holtcamp, 614 S.W.2d 389, 393 (Tenn. Crim. App. 1980). Rules of construction apply only when there is an ambiguity in the term. State v. Lewis, 917 S.W.2d 251, 255 (Tenn. Crim. App. 1995). Under T.C.A. § 55-10-604(b), “offenses” occurring within a one-day period are to be treated as only one offense. Thus, if the defendant had committed two of his offenses on the same date, they would only count as one offense for purposes of this statute. In the present case, the defendant concedes that his offenses occurred on separate dates.

T.C.A. § 55-10-604(c), on the other hand, addresses computing the number of convictions within the applicable time period set forth in T.C.A. § 55-10-603(2)(A). The time begins running from the date of the initial conviction. T.C.A. § 55-10-604(d). Under T.C.A. § 55-10-604(c), if a defendant commits another offense during the applicable period even though the conviction is not actually entered until after the time period has expired, the conviction is counted. This section of the statute does not apply to the defendant’s circumstances, and therefore, it does not support his argument.

Accordingly, based on our review of the statute, we find that it clearly

supports the trial court's finding that the defendant has been convicted of the requisite number of offenses, and the defendant was properly declared a habitual motor vehicle offender. The trial court is affirmed.

THOMAS T. WOODALL, JUDGE

CONCUR:

GARY R. WADE, JUDGE

TERRY L. LAFFERTY, SPECIAL JUDGE