

[Cite as *State v. Learn*, 2017-Ohio-7325.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105365

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

ETHAN LEARN

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-92-284805-ZA

BEFORE: E.T. Gallagher, J., McCormack, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: August 24, 2017

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EILEEN T. GALLAGHER, J.:

{¶1} Plaintiff-appellant, the state of Ohio (“the state”), appeals from a judgment of the trial court that granted the motion of defendant-appellee, Ethan Learn, to terminate the permanent revocation of his driving privileges. The state raises the following assignment of error for our review:

The trial court erred as a matter of law when it granted defendant-appellee’s motion and terminated a permanent driver’s license revocation without first holding a hearing as mandated by R.C. 4510.54.

{¶2} After careful review of the record and relevant case law, we reverse and remand for further proceedings consistent with this opinion.

I. Procedural and Factual History

{¶3} In November 1992, Learn pleaded no contest to a single count of aggravated vehicular homicide in violation of R.C. 2903.06, with a driving while intoxicated specification, and three counts of assault in violation of R.C. 2903.13(A).

{¶4} In January 1993, the trial court imposed an aggregate sentence of three to ten years in prison and permanently revoked Learn’s driver’s license. In June 2016, Learn filed a motion to terminate and/or modify his driver’s license suspension. The state filed a brief in opposition in July 2016. In December 2016, the trial court granted Learn’s motion without a hearing.

{¶5} The state now appeals from the trial court’s judgment.

II. Law and Analysis

{¶6} In its sole assignment of error, the state argues the trial court erred as a matter of law by granting Learn’s motion to terminate the permanent revocation of his driving privileges without a hearing. We agree.

{¶7} R.C. 4510.54 provides that certain persons who have had their driver’s license suspended for life by the sentencing court may file a motion with that court to modify or terminate the suspension. The movant has the burden to demonstrate that (1) at least 15 years have elapsed since the suspension began, (2) for the past 15 years the movant has not been found guilty of any felony, any offense involving a moving violation, or any violation of a suspension of his/her driver’s license, (3) the movant has proof of financial responsibility, and (4) if the suspension was imposed because the movant was under the influence of alcohol at the time of the offense, the movant shall also demonstrate (a) that the movant successfully completed an alcohol treatment program, (b) the movant has not abused alcohol for a period satisfactory to the court, and (c) for the past 15 years the movant has not been found guilty of any alcohol-related offense. R.C. 4510.54(A).

{¶8} The court may, in its discretion, schedule a hearing on a motion for modification or termination of a lifetime suspension under R.C. 4510.54. However, R.C. 4510.54(B) provides in clear, unequivocal language: “the court may deny the motion without a hearing but *shall not grant the motion without a hearing.*” (Emphasis added.)

{¶9} In this case, Learn concedes that the trial court failed to comply with the mandatory language of R.C. 4510.54(B) by granting his motion without a hearing.¹ Accordingly, the state's sole assignment of error is sustained.

{¶10} The judgment of the trial court is reversed and this case is remanded to the trial court for a hearing pursuant to R.C. 4510.54(B).

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR

¹ Loc.App.R. 16(B) provides:

Notice of Conceded Error. When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error either in lieu of or in addition to their responsive brief. Once all briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.