

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

STATE OF OHIO,	:	Case No. 14CA17
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
TY ERSKINE,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED: 02/24/2015

APPEARANCES:

James T. Boulger, Jr., Chillicothe, Ohio, for appellant.

Anneka P. Collins, Highland County Prosecutor, and Ross Greer, Highland County Assistant Prosecutor, for appellee.

Harsha, J.

{¶1} Ty Erskine appeared with counsel and pleaded “no contest” to driving under suspension in violation of R.C. 4510.11 and, after considering the explanation of circumstances the trial court found him guilty. Because he had previously been convicted of three or more violations of driving under suspension within three years of this offense, the court ordered the criminal forfeiture of his vehicle to the state under R.C. 4510.11(D)(2)(c).

{¶2} Erskine claims that the trial court erred when it found him guilty of a violation of R.C. 4510.11 because the explanation of circumstances did not establish the essential elements of the offense. However, the parties’ stipulated explanation of the circumstances, which consists of the law enforcement automated data system (LEADS) report and the written statement of the arresting officer, establishes that Erskine’s driver’s license was suspended under a provision of the Ohio Revised Code other than

Chapter 4509 and that he was operating the vehicle during the suspension. Thus we overrule Erskine's first assignment of error.

{¶3} Next Erskine claims that his vehicle was not subject to forfeiture absent a valid conviction under R.C. 4510.11. But we have already determined his conviction was valid. Alternatively, he argues that even if we affirm his conviction under R.C. 4510.11, the state did not satisfy the statutory precondition for forfeiture. R.C. 4510.11(D)(2)(c) states "If the vehicle is registered in the offender's name" it is subject to forfeiture if it was the vehicle involved in the offense. Erskine argues that because he was operating his vehicle without a valid registration from the Bureau of Motor Vehicles he was not the "registered" owner and the vehicle is not subject to forfeiture. We conclude that the term "registered" in this context means "recorded" in some official register or record. Because Erskine admits he is the listed owner on the vehicle's official title, we reject his argument and overrule his second assignment of error.

I. FACTS

{¶4} The Greenfield police department responded to a report that a white pick-up truck with no license plates was "messing with two tractors that belonged to the state of Ohio or Madison township." The caller had identified the driver of the truck as Ty Erskine. When the police arrived the white pick-up truck was gone, but a fuel transfer pump remained in the fuel tank of one of the tractors and a hose lay on the ground in a small puddle of fuel. The police quickly located the white pick-up truck without license plates and determined that Erskine was operating the truck under a license suspension. The police sergeant issued a ticket charging Erskine with operating a vehicle under a suspended driver license in violation of R.C. 4510.11 and failure to have license plates

for the vehicle in violation of Greenfield Ordinance 335.09. While inventorying the impounded truck, police found marijuana in the glove box. The state charged Erskine with no license plates, driving under suspension, theft, possession of marijuana, and possession of drug paraphernalia. The state dismissed the theft and possession of marijuana charges in exchange for Erskine's guilty plea to possession of drug paraphernalia and Erskine received a fine and sentence. He pleaded no contest to the no license plates charge, was found guilty and fined. The driving under suspension charge is the subject of this appeal.

{¶5} Erskine appeared with counsel and entered a plea of no contest to driving under suspension in violation of R.C. 4510.11. The trial court found Erskine guilty and set a hearing date to consider sentencing and criminal forfeiture of the vehicle. At the sentencing hearing Erskine's counsel informed the trial court and the prosecutor that he was unable to locate a record or obtain a transcript of the no contest plea hearing. Erskine's counsel requested a reconstruction of the factual basis for the conviction on the no contest plea by introducing the law enforcement automated data system (LEADS) report. The parties stipulated that the explanation of circumstances that formed the basis of the trial court's finding of guilt consisted of the written statement of the arresting officer and the LEADS report.

{¶6} After the trial court found Erskine guilty of driving under suspension in violation of R.C. 4510.11, the state sought the forfeiture of Erskine's truck under R.C. 4510.11(D)(2)(c). The trial court ordered the criminal forfeiture of the truck despite Erskine's opposition. Erskine asked the trial court to state the essential findings of fact supporting its order of forfeiture and the trial court provided a supplemental entry that

stated the trial court had found Erskine “to have been convicted of 3 or more violations of R.C. 4510.11, 4510.111, 4510.16 or subsequent similar municipal ordinances within 3 years.”

{¶7} Erskine appealed his conviction of driving under suspension under R.C. 4510.11 and the order of criminal forfeiture.

II. ASSIGNMENTS OF ERROR

{¶8} Erskine assigns the following errors for our review:

I. The trial court erred to the prejudice of the defendant when, upon his plea of no contest, it found him guilty of a violation of R.C. 4510.11 on an explanation of circumstances which did not establish the essential elements of the offense.

II. The trial court was without authority to order as a sentencing sanction under 4510.11(D)(2)(c) the forfeiture of the defendant’s vehicle in the absence of a valid conviction for a violation of 4510.11 R.C. and statutory preconditions for forfeiture.

III. LAW AND ANALYSIS

A. First Assignment of Error

{¶9} Erskine contends that the trial court erred when it found him guilty on his plea of no contest to the charge of driving under suspension because the explanation of circumstances did not establish the essential elements of the offense.

{¶10} Appellate review of a trial court’s finding of guilt on a no contest plea to a misdemeanor is de novo: We review the explanation of circumstances to determine if there is sufficient evidence in the record to establish all of the elements of the offense. *City of Cuyahoga Falls v. Bowers*, 9 Ohio St.3d 148,150, 459 N.E.2d 532, 535 (1984).

{¶11} A defendant who enters a plea of no contest to a misdemeanor admits the truth of the facts alleged in the complaint and a judge may make a finding of guilty or not

guilty from the explanation of the circumstances of the offense. See R.C. 2937.07. If the explanation of circumstances does not support all the elements of the offense, then the defendant who pleads no contest has a substantive right to be acquitted. *Bowers*, 9 Ohio St.3d at 150.

{¶12} The state charged Erskine with a violation of R.C. 4510.11, which states:

4510.11 Driving under suspension or in violation of license restriction

(A) * * * no person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Revised Code, other than Chapter 4509. of the Revised Code, *
* * shall operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this state during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges.

Thus, the explanation of circumstances must provide sufficient evidence that Erskine's driver's license was suspended under any provision of the Ohio Revised Code other than Chapter 4509 and that he was operating the vehicle during the period of suspension.

{¶13} Erskine concedes that he was operating the vehicle while under a license suspension. But he argues that the LEADS report, which the parties stipulated was part of the explanation of circumstances, does not provide sufficient evidence that his license was "suspended under any provision of the Revised Code other than Chapter 4509." He argues that at the time he was operating the vehicle, his license was suspended under R.C. 4509.101. Therefore, he argues he could have been convicted of violating R.C. 4510.16, which governs driving under a financial responsibility law suspension, but not R.C. 4510.11, which governs driving under other types of license suspensions.

{¶14} He argues that the LEADS report shows that he was under a “non-compliance” suspension that was imposed for a violation of R.C. 4509.101. The state argues that the LEADS report shows that the “non-compliance” suspension was imposed for a violation of R.C. 4510.11.

{¶15} Our review of the LEADS report reveals that Erskine’s driving record was subject to thirty license suspensions dating back to 1996. They are noted as “non-compliance” suspensions, “court” suspensions, “drug offense” suspensions, and “administrative license” suspensions, to name but a few. The relevant suspension for our purposes is the one that he was driving under at the time of his offense on October 13, 2013.

{¶16} The LEADS report shows that there were three different suspensions whose terms were in effect at the time Erskine committed the offense. A suspension effective September 20, 2013 to September 20, 2015 was imposed for a conviction in Highland County Court Case No. TRD1300123A and was in effect on October 13, 2013, the date of the latest offense. The LEADS report shows that the conviction in that case was a result of a guilty plea to the offense of driving under suspension in violation of R.C. 4510.11. Thus, Erskine’s suspension was not for a violation of R.C. 4509.101, as he argues, but was for a violation of R.C. 4510.11. In sum, Erskine pleaded guilty to driving while his license was suspended under a provision other than the financial responsibility provisions under Chapter 4509 and received another suspension.

{¶17} The conviction in Highland County Court Case No. TRD1300123A is sufficient evidence to establish the element that his license was suspended for a provision other than Chapter 4509. Erskine does not contest the remaining elements of

R.C. 4510.11. Thus, we find that the explanation of circumstances establishes the elements of an offense under R.C. 4510.11.

{¶18} We find no evidence in the record, nor has Erskine pointed to any statutory or case law, that supports his argument that the “non-compliance” suspensions on the LEADS report are all exclusively for violations of R.C. 4509.101 or R.C. 4509.16, governing financial responsibility suspensions. In fact, the LEADS reports lists a number of his suspensions as “non-compliance” suspensions and at least three of them are for violations of R.C. 4510.11, to which he pleaded guilty. If Erskine believes the LEADS report inaccurately reflects his license suspensions, he waived his right to present evidence to rebut it when he pleaded “no contest.” The no contest plea is an admission to the facts as laid out by the stipulation.

The essence of the “no contest” plea is that the accused cannot be heard in defense. . . . Although the trial court retains discretion to consider a defendant's contention that the admitted facts do not constitute the charged offense, the defendant who pleads no contest waives the right to present additional affirmative factual allegations to prove that he is not guilty of the charged offense. By pleading no contest, the defendant waives his right to present an affirmative defense.

State ex rel. Stern v. Mascio, 75 Ohio St.3d 422, 424, 662 N.E.2d 370, 372-373 (1996)(citations omitted).

{¶19} The stipulated explanation of the circumstances establishes the essential elements of the offense set forth in R.C. 4510.11. The LEADS report provides sufficient evidence that Erskine was driving under a suspension from a provision of the Revised Code other than Chapter 4509. Thus, we overrule Erskine's first assignment of error.

B. Second Assignment of Error

{¶20} Erskine's second assignment of error has two parts. First, he argues that because the explanation of circumstances did not establish all the elements of R.C. 4510.11, his conviction was not valid and the sentencing sanction of criminal forfeiture under R.C. 4510.11(D)(2)(c) should be set aside. We are affirming the trial court's conviction under R.C. 4510.11, therefore the first part of Erskine's second assignment of error is meritless because it is based upon a faulty factual premise.

{¶21} Second, he argues alternatively that even if we determine that his conviction under R.C. 4510.11 was proper, the criminal forfeiture provision applies only where the vehicle is "registered" in the offender's name. In effect he argues "registered" means registered with the registrar of motor vehicles. Because the state failed to satisfy this precondition of the provision, he contends the order of forfeiture should be set aside even though he owned and used it in the offense.

{¶22} We review questions of statutory interpretation de novo. See *In the Matter of O.H.*, 4th Dist. Washington App. No. 09CA38, 2010-Ohio-1244, ¶8 ("We examine questions of statutory interpretation de novo.")

{¶23} Erskine's argument on statutory interpretation focuses on R.C. 4510.11(D)(2)(c), which states:

(c) If the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of this section, or any combination of three or more violations of this section or section 4510.111 or 4510.16 of the Revised Code, or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender, may order the criminal forfeiture of the vehicle involved in the offense to the state.

{¶24} Erskine notes that this subsection requires that the vehicle be "registered" in the offender's name as a precondition to any criminal forfeiture. And he argues that

the term “registered” means that the offender must have a vehicle registration in the offender’s name with the registrar of motor vehicles. Although he concedes he is the owner listed on the vehicle’s title, he argues that having his name listed on the official title of the vehicle does not satisfied the precondition that the vehicle be “registered” in his name.

{¶25} In its motion to forfeit the vehicle the state argued that Erskine’s failure to register the vehicle with the registrar of motor vehicles constituted an additional offense in violation of R.C. 4503.11, a fourth degree misdemeanor. This section requires Erskine to file an application for registration and pay a tax. The state contends that Erskine should not be “rewarded” for violating R.C. 4503.11. Additionally, the state argues the fact that Erskine is listed as the owner on the official LEADS report satisfies the “precondition.”

{¶26} A court’s goal when interpreting and applying a statute is to give effect to the legislature’s intent when enacting the statute. We give meaning to each word, neither adding nor removing words from the statute. Terms that the legislature intended to have a specialized or technical meaning and are specifically defined in the statute are given their technical meanings. Otherwise, terms are given their plain, ordinary, common meanings. *In the Matter of O.H.*, 4th Dist. Washington App. No. 09CA38, 2010-Ohio-1244, ¶8. If a statute’s meaning is unambiguous and definite, we must apply it as written as no further interpretation is necessary. *In re Adoption of B.M.W.*, 4th Dist. No. 10CA899, 2010-Ohio-5214, ¶13 citing *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶9. A term is ambiguous if it is susceptible of more than one **reasonable** interpretation. *State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St.3d 508,

513, 668 N.E.2d 498 (1996). For an interpretation to be reasonable it must give effect to the legislature's intent. A proposed interpretation that is inconsistent with or frustrates the legislative intent is not a reasonable one and does not create an ambiguity. *Utility Air Regulatory Group v. E.P.A.*, ___U.S.___, 134 S.Ct. 2427, 2442, 189 L.Ed.2d 372 (2014)(a reasonable statutory interpretation must account for the specific context in which it is used and the broader context of the statute as a whole); *State v. Stevens*, 139 Ohio St.3d 247, 2014-Ohio-1932, 11 N.E.3d 252, ¶38 (Kennedy, J., concurring in part and dissenting in part).

{¶27} R.C. 4510.11(D)(2)(c) is part of R.C. 4510.11, which prohibits a person with a suspended license from operating a motor vehicle during the time of the suspension. Subsection (D) of this statute imposes penalties for a violation of 4510.11(A) or (B). Initially, the penalty is a misdemeanor of the first degree and a court may order a further suspension of the offender's license. However, as the offender accumulates additional violations of R.C. 4510.11 or several related statutes, harsher penalties apply progressively. An offender with one additional violation within a three year period may have the vehicle immobilized and license plates impounded for a thirty-day period. R.C. 4510.11(D)(2)(a). An offender with two additional violations within a three year period may have the vehicle immobilized and license plates impounded for a sixty-day period. R.C. 4510.11(D)(2)(b). Finally, when an offender has three or more additional violations within a three year period, the court may forfeit the vehicle. R.C. 4510.11(D)(2)(c). The legislature's clear intent was to mete out progressively harsher penalties as an offender accumulates additional violations.

{¶28} R.C. 4510.11(D)(2)(c) allows for criminal forfeiture if the vehicle is

“registered” in the name of the offender and was the vehicle used to commit the offense. The term “registered” is not defined in either of the definitional sections in R.C. 4510.01 or R.C. 4501.01. The ordinary and common meaning of “registered” is “[e]ntered or recorded in some official register or record or list,” Black’s *Law Dictionary* 1154 (5th Ed. 1979). (*Black’s Law Dictionary* 1287 (7th Ed. 1999) does not define “registered” but defines “register” as “to enter in a public registry, to enroll formally, to make a record of”); see *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812, ¶25 (using *Black’s Law Dictionary* to construe the meaning of “registered voter”).

{¶29} Under the common and ordinary meaning of “registered,” a vehicle is “registered” in the offender’s name if it is recorded on the official title or listed with the registrar of motor vehicles. Under the ordinary and common meaning, Erskine’s listing as the owner on the title is sufficient to show the vehicle was “registered” in his name within the context and meaning of the statute.

{¶30} When we give the term “registered” this ordinary and common meaning we do not frustrate or create inconsistencies with the legislative intent. The statutory provision is a penalty intended to punish the offender by taking away the offender’s vehicle. The legislature did not provide for criminal forfeiture if the vehicle belongs to someone else and was stolen or borrowed by the offender. That would punish an innocent third party. Instead, the legislature intended to punish the multiple offender by making the offender’s vehicle subject to criminal forfeiture. Hence, if the vehicle is listed on an official record in the offender’s name, it is subject to forfeiture.

{¶31} However, Erskine argues that one reasonable interpretation of the term “registered” means only those instances where the offender has complied with the

process outlined in R.C. 4503.11 by filing an application for the vehicle with the registrar of motor vehicles. He concedes he owns the vehicle and he otherwise would be subject to the criminal forfeiture provision because he has violated the relevant statutory provisions three or more times within the past three years and he used the vehicle to commit the offense. However, he argues his additional violation of R.C. 4503.11 by failing to register with the registrar of motor vehicles results in immunity from the harshest penalty under R.C. 4510.11(D)(2)(c). His proffered definition of the term “registered” is unreasonable – it is inconsistent with the legislative intent to create harsher penalties for accumulative violations and frustrates the legislature’s objective to provide for the forfeiture of the offender’s vehicle. He cites no authority for his argument. *But see, State v. Stevens, State v. Bondurant*, 139 Ohio St.3d 247, 2014-Ohio-1932, 11 N.E.3d 252, finding the Ohio RICO statute ambiguous and applying the rule of lenity.

{¶32} Because his proposed interpretation is not reasonable within the context of the overall legislative scheme, we are not required to apply the rule of lenity to obtain an absurd result. “The canon in favor of strict construction of criminal statutes is not an obstinate rule which overrides common sense and evident statutory purpose. The canon is satisfied if the statutory language is given fair meaning in accord with the manifest intent of the General Assembly.” *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, 972 N.E.2d 534, ¶20 (“although criminal statutes are strictly construed against the state, R.C. 2901.04(A), they should not be given an artificially narrow interpretation that would defeat the apparent legislative intent”); *State v. Sway*, 15 Ohio St.3d 112, 116, 472 N.E.2d 1065, 1068 (1984) citing *United States v. Moore*, 423 U.S. 122, 145, 96 S.Ct. 335, 346, 46 L.Ed.2d 333 (1975); *United States v. Brown*, 333 U.S.

18, 25–26, 68 S.Ct. 376, 379–380, 92 L.Ed. 442 (1948). Here purpose of the canon of lenity is satisfied: the term “registered” is given a fair meaning consistent with common sense and the manifest intent of the General Assembly.

{¶33} Because there is only one reasonable interpretation of the term “registered” as used in R.C. 4510.11(D)(2)(C), the term is unambiguous and we stop here. “[W]hen the General Assembly has plainly and unambiguously conveyed its legislative intent, there is nothing for a court to interpret or construe, and therefore, the court applies the law as written.” *State v. Kreischer*, 109 Ohio St.3d 391, 2006-Ohio-2706, 848 N.E.2d 496, syllabus. When a statute is plain and unambiguous, “there is no occasion for resorting to rules of statutory interpretation.” *State v. Hurd*, 89 Ohio St.3d 616, 2000-Ohio-2, 734 N.E.2d 365, quoting *Sears v. Weimer*, 143 Ohio St. 312, 28 O.O. 270, 55 N.E.2d 413, (1944) paragraph five of the syllabus.

{¶34} Erskine’s proposed meaning is unreasonable as it would give an artificially narrow interpretation that would defeat the apparent legislative intent. The term “registered” is unambiguous and has the common meaning, “to be listed in the offender’s name on an official record.” We overrule Erskine’s second assignment of error and affirm the trial court’s order of criminal forfeiture.

IV. CONCLUSION

{¶35} The trial court properly entered a guilty finding on Erskine’s plea of no contest to a violation of R.C. 4510.11 because the explanation of circumstances set forth sufficient evidence of the elements of the offense. Because the trial court properly determined that the vehicle was “registered” to Erskine, we affirm the trial court’s order of criminal forfeiture of Erskine’s vehicle.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.