

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 103098**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**EDWARD J. HYDE**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-98-368392-ZA

**BEFORE:** Blackmon, J., Jones, A.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** January 14, 2016

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Edward Hyde (“Hyde”) appeals the trial court’s denial of his motion to reinstate his driving privileges or allow him limited occupational driving privileges. He assigns the following error for our review:

I. The trial court erred by denying defendant-appellant’s motion for termination of suspension, or for limited occupational driving privileges based on the court’s interpretation of law that the defendant-appellant was ineligible for any modification of his license suspension since the court ruled that “as defendant has been convicted under R.C. 2903.06 and 2903.08, with DUI specifications, R.C. 4510.54 and R.C. 4510.021 do not apply to defendant \* \* \* therefore, this court has no authority to modify the sentence or grant the defendant occupational driving privileges.”

{¶2} Having reviewed the record and pertinent law, we reverse the trial court’s decision and remand for a hearing. The apposite facts follow.

{¶3} On October 20, 1998, the Cuyahoga County Grand Jury indicted Hyde for one count of aggravated vehicular homicide and six counts of aggravated vehicular assault. All of the counts had a driving under the influence (“DUI”) specification attached.

{¶4} On December 7, 1998, Hyde pleaded guilty to one count of aggravated vehicular homicide, a third-degree felony, and three counts of aggravated vehicular assault, a fourth-degree felony, with the DUI specifications. The remaining counts were nolle.

{¶5} The trial court sentenced Hyde to five years for the aggravated vehicular homicide charge and one year each for the aggravated vehicular assault charges. The

sentences were ordered to run concurrently. In addition, the trial court suspended Hyde's driver's license for life.

{¶6} Hyde filed a delayed appeal. This court affirmed his conviction in *State v. Hyde*, 8th Dist. Cuyahoga No. 77592, 2001 Ohio App. LEXIS 81 (Jan. 11, 2001), but concluded that Hyde was not subject to postrelease control because the trial court failed to impose postrelease at the sentencing hearing or in the judgment entry. Hyde was released from prison on October 5, 2003.

{¶7} On December 3, 2013, Hyde filed a "motion for termination of suspension, or for limited occupational driving privileges." Hyde contended he was eligible for termination of the life suspension pursuant to R.C. 4510.54 because he fulfilled the mandated requirements of the statute. Over 15 years had elapsed from the termination. He also successfully completed an intensive substance abuse program and was utilized as a "facilitator" for other inmates enrolled in the program and after incarceration served as a "in-house" drug counselor for the Cleveland Municipal Court. Additionally, while incarcerated Hyde completed a training program to become a Licensed Practical Nurse, and after incarceration obtained a Bachelor's Degree and Master's Degree in Business Administration from Cleveland State University. At the time of the motion, he worked full-time for the federal government department of defense.

{¶8} On January 21, 2014 and March 25, 2014, the trial court conducted a hearing on the motion. Subsequent to the hearing, the trial court ordered further briefing on the matter. On May 6, 2015, the trial court denied Hyde's motion concluding as follows:

In essence, the defendant is requesting this court to modify his sentence, however, “Ohio trial courts do not possess the authority to modify a criminal sentence that has been imposed unless there is a specific statutory authority to do so.” *State v. Raitz*, 6th Dist. Lucas No. L-03-1316, 2004-Ohio-4274, Para. 5.

“Additionally, courts have held that where a defendant is convicted for aggravated vehicular homicide while driving under the influence of alcohol, a trial court lacks the authority to grant occupational driving privileges for the revocation period imposed by statute.” *Raitz*, Fn. 3, citing *State v. Prosser*, 1st Dist. [Hamilton] No. C-030187, 2003-Ohio-5516, at para. 9-11; *State v. Patterson*, 8th Dist. Cuyahoga No. 82381, 2003-Ohio-4946, at para. 5-11; *State v. Rowe*, 118 Ohio App.3d 121, 125-126, 691 N.E.2d 1140 ([9th Dist.]1997). *See also State v. Helms*, 5th Dist. [Licking] No. 00 CA 107, 2001 Ohio App. LEXIS 2407 (May 21, 2001).

As defendant has been convicted under R.C. 2903.06 and 2903.08, with DUI specifications, R.C. 4510.54 and R.C. 4510.021 do not apply to defendant. Therefore, this court has no authority to modify.

Journal Entry, May 6, 2015.

### **Reinstatement of Driver’s License**

{¶9} In his sole assigned error, Hyde argues that the trial court abused its discretion by denying his motion.

{¶10} The trial court concluded that Hyde was ineligible to have his driver’s license suspension terminated or occupational driving privileges granted because he committed the crimes while under the influence. However, in so holding, the trial court relied upon outdated case law. The cases cited by the trial court were all decided prior to the enactment of R.C. 4510.54 and 4510.021.

{¶11} In 2004, the General Assembly enacted R.C. 4510.54 and 4510.021 to create a mechanism for drivers whose licenses had been suspended to restore their driving privileges. *State v. Manocchio*, 138 Ohio St.3d 292, 2014-Ohio-785, 6 N.E.3d 47, ¶ 18.

R.C. 4510.021 grants trial courts the discretion to grant limited driving privileges during any suspension, and R.C. 4510.54 allows for motions for modification or termination of lifetime suspensions of driving privileges. *Id.* *Manocchio* differentiated the two statutes by concluding that granting limited driving privileges pursuant to R.C. 4510.021 does not constitute a modification of a lifetime suspension within the meaning of R.C. 4510.54(A) because the granting of limited driving privileges does not terminate the underlying suspension. *Id.* at ¶ 16. Therefore, a driver could ask for the reinstatement of occupational driving privileges prior to the time he is eligible to have the suspension entirely lifted.

{¶12} Therefore, in spite of the trial court holding otherwise, there clearly exists statutory authority that allows the trial court to terminate or modify Hyde’s license suspension or grant him occupational driving privileges. Hyde’s motion requested relief under both provisions.

{¶13} R.C. 4510.54(A) states as follows:

[A] person whose driver’s or commercial driver’s license has been suspended for life under a class one suspension or as otherwise provided by law or has been suspended for a period in excess of fifteen years under a class two suspension may file a motion with the sentencing court for modification or termination of the suspension.<sup>1</sup>

{¶14} Under R.C. 4510.54, a defendant whose license has been suspended for life or for a period greater than 15 years may petition the sentencing court to modify the term of the suspension. R.C. 4510.54(A)(1). The defendant must also demonstrate proof of

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<sup>1</sup>According to R.C. 4510.02(A) a class one suspension is “a definite period for the life of the person subject to the suspension.” A class two suspension is “a definite period of three years to life.”

financial responsibility or that he or she has a policy of liability insurance in effect. R.C. 4510.54(A)(2). In the case of a suspension for driving under the influence, the defendant must also show that he or she completed a substance abuse treatment program and resulting sobriety and no drug or alcohol-related offenses for the past 15 years. R.C. 4510.54(A)(3).

{¶15} It is undisputed that Hyde's suspension commenced in 1998 and that 17 years has elapsed and that he has no felonies, moving violations, or drug or alcohol-related offenses in the past 15 years. However, the trial court refused to modify or terminate Hyde's suspension because he committed the offenses while under the influence of alcohol. This was an erroneous conclusion. R.C. 4510.54(A)(3) specifically states:

(3) If the suspension was imposed because the person was under the influence of alcohol, a drug of abuse, or combination of them at the time of the offense or because at the time of the offense the person's whole blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code or at least the concentration of a listed controlled substance or a listed metabolite of a controlled substance specified in division (A)(1)(j) of section 4511.19 of the Revised Code, the person also shall demonstrate all of the following:

- (a) The person successfully completed an alcohol, drug, or alcohol and drug treatment program.
- (b) The person has not abused alcohol or other drugs for a period satisfactory to the court.
- (c) For the past 15 years, the person has not been found guilty of any alcohol-related or drug-related offense.

{¶16} Therefore, the statute specifically allows the defendant the opportunity to show that he has overcome his or her addiction.

{¶17} During Hyde's incarceration, he successfully completed an intensive nine-month substance abuse program and was utilized as a facilitator for other inmates enrolled in the program. After incarceration he was an "in-house" counselor for the Cleveland Municipal Court's drug court program. Attached to Hyde's motion was a 2011 certificate from the Ohio Chemical Dependency Professionals Board that certified Hyde as a chemical dependency counselor assistant. There is no evidence that he has been found guilty of any alcohol or drug-related offenses in the past 17 years. Thus, because Hyde fulfilled the requirements set forth in R.C. 4510.54(A)(3), the trial court's reliance on the fact he committed the offenses while under the influence was not a valid basis for denying his motion.

{¶18} The exclusions that do appear in R.C. 4510.54 do not apply to Hyde. R.C. 4510.54(F) excludes the following individuals from being able to terminate or modify their life suspensions:

(F) This section does not apply to any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended for life under a class one suspension imposed under division (B)(3) of section 2903.06<sup>2</sup> or section 2903.08<sup>3</sup> of the Revised

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<sup>2</sup> Aggravated vehicular homicide with a "prior conviction for traffic-related murder, felonious assault, or attempted murder offense."

<sup>3</sup> Aggravated vehicular assault with a "prior conviction for traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious



Code or a class two suspension imposed under division (C) of section 2903.06,<sup>4</sup> or section 2903.11,<sup>5</sup> 2923.02,<sup>6</sup> or 2929.02<sup>7</sup> of the Revised Code.

{¶19} Although the state argues otherwise, none of the above exclusions apply in the instant case. Hyde did not plead guilty to a class one suspension. The statute that categorizes the classes of suspension, R.C. 4510.02, was not enacted until 2003. Hyde pleaded guilty to aggravated vehicular homicide, a felony of the third degree pursuant to R.C. 2903.06 and aggravated vehicular assault, a felony of the fourth degree pursuant to R.C. 2903.08. The exclusions in R.C. 4510.54(F) apply to convictions for aggravated vehicular homicide and aggravated vehicular assault where the driver also had a prior conviction for traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense. Hyde did not have any prior convictions for these offenses prior to his 1998 guilty pleas. Therefore, none of the exclusions set forth in R.C. 4510.54(F) apply.

{¶20} Although Hyde sustained his burden pursuant to R.C. 4510.54(A)(1) and (A)(3), he still had to satisfy R.C. 4510.54(A)(2). Pursuant to R.C. 4510.54(A)(2), the trial court cannot terminate the driver's license suspension until Hyde provides "proof of

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assault, or attempted murder offense."

<sup>4</sup> Aggravated vehicular homicide with a prior conviction for traffic-related murder, felonious assault, or attempted murder offense.

<sup>5</sup> Felonious assault where deadly weapon used was a motor vehicle.

<sup>6</sup> Attempted aggravated murder or murder where deadly weapon is a motor vehicle.

<sup>7</sup> Aggravated murder or murder where deadly weapon is a motor vehicle.

financial responsibility, proof of liability insurance, or proof to the satisfaction of the registrar of motor vehicles that he would be able to respond in damages in the minimum amount.” Notably, the trial court did not deny Hyde’s motion based on his failure to comply with R.C. 4510.54(A)(2). Thus, we remand the matter for the trial court to make a determination as to whether Hyde is able to obtain insurance or is financially responsible.

{¶21} In so remanding, we acknowledge that R.C. 4510.54(D) does allow the trial court discretion in determining whether the modification or termination should be granted based on “other considerations” as follows:

Before ruling on the motion, the court shall take into account the person’s driving record, the nature of the offense that led to the suspension, and the impact of the offense on any victim. In addition, if the offender is eligible for modification or termination of the suspension under division (A)(1)(a) of this section, the court shall consider whether the person committed any other offense while under suspension and determine whether the offense is relevant to a determination under this section. The court may modify or terminate the suspension subject to any considerations it considers proper if it finds that allowing the person to drive is not likely to present a danger to the public. \* \* \*.

{¶22} The basis for the trial court’s denial as set forth in its journal entry was based upon erroneous legal conclusions and not on any finding that the evidence showed that allowing Hyde to drive would present a danger to the public. He has remained a law-abiding citizen since the charges and appears to have overcome his alcohol addiction.

{¶23} However, if the trial court concludes that Hyde’s life suspension should not be terminated, it could still grant Hyde occupational driving privileges pursuant to R.C. 4510.021(A). R.C. 4510.021(A) provides in pertinent part:

(A) Unless expressly prohibited by section 2919.22,<sup>8</sup> section 4510.13,<sup>9</sup> or any other section of the Revised Code, a court may grant limited driving privileges for any purpose described in division (A)(1), (2), or (3) of this section during any suspension imposed by the court. In granting the privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges shall be for any of the following limited purposes:

(1) Occupational, educational, vocational, or medical purposes;

{¶24} The state notes that R.C. 4510.13(C)(3) provides:

No judge or mayor shall suspend any class one suspension, or any portion of any class one suspension, imposed under section 2903.04, 2903.06, 2903.08, or 2921.331 of the Revised Code.

{¶25} The state contends that this provision is not available to Hyde because his convictions pursuant to R.C. 2903.06 and 2903.08 contained a class-one driver's license suspension. However, as we held above, the class delineations were created in 2003, long after Hyde entered his plea in 1998, and the current class-one classifications do not apply to him because he did not have a prior conviction for a "traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense." Thus, because a class-one suspension was not imposed upon Hyde, the exclusionary language contained in R.C. 4510.03(C)(3) does not apply. Therefore, the trial court did have authority to grant occupational driving privileges pursuant to R.C. 4510.021. In fact, at oral argument, the prosecutor conceded that the

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<sup>8</sup> Endangering children statute.

<sup>9</sup> Statute regarding restrictions on suspending license or granting limited privileges within the first three years of suspension.

trial court could, under the current state of the law, grant occupational driving privileges to Hyde.

{¶26} However, like R.C. 4510.54, R.C. 4510.021(E), requires that prior to granting the limited privileges, the court require the offender to provide proof of financial responsibility or liability insurance.

{¶27} Accordingly, we sustain Hyde’s sole assigned error and remand the matter for the trial court to conduct a hearing to determine whether “other considerations” weigh against terminating Hyde’s life suspension pursuant to R.C. 4510.54(D) and to allow Hyde to provide “proof of financial responsibility, proof of liability insurance, or proof to the satisfaction of the registrar of motor vehicles that he would be able to respond in damages in the minimum amount” pursuant to R.C. 4510.54(A)(2) and 4510.021(E).

{¶28} Judgment reversed and remanded.

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 be sent to the Cuyahoga County Court of Common Pleas 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.

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PATRICIA ANN BLACKMON, JUDGE

LARRY JONES, SR., A.J., and  
MARY J. BOYLE, J., CONCUR