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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46410-2018
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY
v.)	NO. CR-2017-21484
)	
MICHAEL WATSON CONICONDE,)	
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE LANSING L. HAYNES
District Judge**

**ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555**

**ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Michael Watson Coniconde appeals from his judgment of conviction, as amended by the district court's order amending judgment, arguing the district court erred in ordering his driver's license suspension commence upon his release from incarceration rather than upon his conviction because, pursuant to Idaho Code § 49-1404(3), a license suspension for felony eluding must commence upon conviction.

Statement of Facts and Course of Proceedings

Mr. Coniconde pled guilty to felony eluding and placing an obstruction on a railroad track. (8/17/18 Tr., p.25, Ls.8-14; R., pp.97, 101-02.) At the change of plea hearing, Mr. Coniconde told the district court he was driving a 1998 Jeep Cherokee over 30 miles per hour over the posted speed limit, and willfully fled and attempted to elude a police vehicle that was giving him a visual signal to stop. (7/19/18 Tr., p.17, L.17 – p.18, L.23.) He placed the vehicle in the path of an oncoming train, apparently by pushing it over the edge of a steep hill. (7/19/18 Tr., p.18, L.24 – p.19, L.7, 8/17/18 Tr., p.32, Ls.18-24.)

Before accepting Mr. Coniconde's guilty plea, the district court described the penalty for felony eluding as follows: "The maximum penalty for that offense is five years of incarceration and/or \$50,000." (7/19/18 Tr., p.7, Ls.4-6.) The district court continued: "There's also a mandatory driver's license suspension. It's an absolute suspension without any restricted privileges for one year. I have to suspend your license for one year if you plead guilty to this. I can extend that driver's license suspension up to a maximum of five years."¹ (7/19/18 Tr., p.7,

¹ The district court was mistaken. The district court only had discretion to suspend Mr. Coniconde's license for up to three years under Idaho Code § 49-1404(3).

Ls.9-14.) The district court did not explain to Mr. Coniconde the start date for the license suspension.

The district court sentenced Mr. Coniconde for each felony to a unified term of five years, with two years fixed, to be served concurrently. (R., p.99; 8/17/18 Tr., p.26, L.23 – p.27, L.13, p.36, L.24 – p.37, L.5.) At sentencing, the district court said it was suspending Mr. Coniconde’s driver’s license for a three-year period that “begins from the time that you’re released on parole or when you’re out of the prison.” (8/17/18 Tr., p.37, Ls.6-11.) The judgment reflects that Mr. Coniconde’s driving privileges “shall be absolutely suspended for a period of three (3) years commencing upon [his] release from incarceration” (R., p.99.) Mr. Coniconde filed a timely notice of appeal. (R., pp.98-100, 103-05.)

Mr. Coniconde next filed a motion pursuant to Idaho Criminal Rule 35 for reconsideration of sentence. (R., pp.111-13.) He argued the district court erred in ordering his license suspension commence upon his release from incarceration rather than upon his conviction based on the language of section 49-1404(3). (R., p.112.) At the Rule 35 hearing, Mr. Coniconde testified regarding the opportunities and programming available to him within the Idaho Department of Correction. (1/25/19 Tr., p.6, L.14 – p.7, L.12.) He also testified he intended to return to his union road construction job upon his release, and would need to operate a vehicle as part of his work. (1/25/19 Tr., p.8, L.18 – p.9, L.16.) He asked the district court to reduce his license suspension from three years to one year, commencing upon the date of his conviction rather than the date of his release from incarceration. (1/25/19 Tr., p.10, Ls.2-19.)

The district court reduced Mr. Coniconde’s license suspension from 36 months to 18 months, but the district court did not change the start date for the suspension. (1/25/19 Tr., p.16, Ls.1-12.) The district court explained:

The Court, although it has some discretion here, does not find it to be really – to make sense to allow someone to serve a driver’s license suspension while they’re in an institution where they cannot, in fact, drive anyway. There’s no deterrence there to suspend a license in a time when you can’t drive. There’s no punishment. There’s no deterrence. There’s no rational relationship between that suspension and the goals of sentencing.

So this Court believes it needs to start, to make any sense at all, from the time when that person has the ability to get licensed again.

(1/25/19 Tr., p.16, Ls.13-24.) The district court entered an order amending judgment on January 28, 2019,² which states Mr. Coniconde’s driving privileges “shall be absolutely suspended for a period of one (1) year and six (6) months commencing upon release from incarceration and/or imprisonment imposed pursuant to the [Judgment] dated August 20, 2018.”³

(Motion to Augment, Ex. A.)

² The Order Amending Judgment, dated January 28, 2019, is not included in the Clerks’ Record. Simultaneously with the filing of this brief, Mr. Coniconde is filing a Motion to Augment to include a copy of this Order in the Record.

³ The Judgment of Conviction is dated August 20, 2018, but was not filed until August 21, 2018. (Motion to Augment, Ex. A.)

ISSUE

Did the district court err in ordering Mr. Coniconde's driver's license suspension commence upon his release from incarceration rather than upon his conviction?

ARGUMENT

The District Court Erred In Ordering Mr. Coniconde's Driver's License Suspension Commence Upon His Release From Incarceration Rather Than Upon His Conviction

A. Introduction

The district court erred in ordering Mr. Coniconde's driver's license suspension commence upon his release from incarceration rather than upon his conviction because, pursuant to Idaho Code § 49-1404(3), a license suspension for felony eluding commences upon a finding of guilt as reflected in a judgment of conviction.

B. Standard Of Review

The interpretation of a statute presents a legal question over which this Court exercises free review. *State v. Thiel*, 158 Idaho 103, 106 (2015).

C. Idaho Code § 49-1404(3) Unambiguously Provides That A License Suspension For Felony Eluding Commences Upon A Finding Of Guilt As Reflected In A Judgment Of Conviction

Statutory construction “must begin with the literal words of the statute” and “those words must be given their plain, usual and ordinary meaning” and “the statute must be construed is a whole.” *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 69 (2003) (citations omitted). “If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” *Id.* (citation omitted).

Idaho Code § 49-1404(3) is not ambiguous. The literal words of the statute provide that a license suspension for felony eluding commences upon a finding of guilt as reflected in a judgment of conviction. The statute states:

The department shall suspend the driver's license or privileges of a person who has pled guilty or is found guilty of a misdemeanor violation of this section,

notwithstanding the form of the judgment or withheld judgment, as provided in section 49-326, Idaho Code.⁴ Any person who has pled guilty or is found guilty of a felony violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, shall have his driving privileges suspended by the court for a minimum of one (1) year, which may extend to three (3) years, at the discretion of the court, during which time he shall have absolutely no driving privileges of any kind.

Under the plain language of this statute, the district court must revoke the driving privileges of any person who has pled guilty or is found guilty of felony eluding for a minimum of one year, and a maximum of three years. The start date for the license suspension must be the entry of the judgment of conviction (regardless of the form of the judgment), as there is no other date referenced in the statute.

Here, the district court found Mr. Coniconde guilty of felony eluding in the judgment of conviction, which was filed on August 21, 2018. The judgment states:

Count I – Idaho Code 49-1404(2), Eluding, a Felony.

Count II – Idaho Code 18-6009, Placing an Obstruction on a Railroad Track, a Felony.

THAT YOU ARE GUILTY OF THE CRIME(S) SO CHARGED

(R., p.99.) The district court did not have discretion to order Mr. Coniconde’s license suspension commence upon his release from incarceration under the plain language of section 49-1404(3).

⁴ Idaho Code § 49-326 states, in pertinent part, “If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver . . . upon a showing by its records . . . that the driver . . . [h]as been convicted of the offense of reckless driving, or fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days *upon conviction*” I.C. § 49-326(1)(f) (emphasis added).

D. Alternatively, If This Court Concludes Idaho Code § 49-1404(3) Is Ambiguous, It Should Interpret The Statute To Mean That A License Suspension For Felony Eluding Commences Upon A Finding Of Guilt As Reflected In A Judgment Of Conviction

If this Court concludes section 49-1404(3) is capable of more than one reasonable interpretation with respect to the start date for the running of the license suspension, then this Court must construe the statute “to mean what the legislature intended for it to mean.” *City of Sandpoint*, 139 Idaho at 69 (citation omitted). In determining legislative intent, this Court “examine[s] not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.” *Id.* (citations omitted). The legislature intended that the license suspension for felony eluding run from the entry of the judgment of conviction.

The most compelling evidence of legislative intent in this case stems from the rule of *in pari materia*, which is “a canon of construction used to effectuate legislative intent” when a statute is ambiguous. *In re Adoption of Doe*, 156 Idaho 345, 350 (2014) (quotation marks and citations omitted). Under the rule of *in pari materia*, “[w]here a statute with respect to one subject contains a certain provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed.” *City of Sandpoint*, 139 Idaho at 69 (citation omitted).

The Legislature imposed a mandatory driver’s license suspension in the statutes imposing penalties for driving under the influence of alcohol (“DUI”), just as it did in section 48-1404(3). However, in the DUI statutes, the Legislature made clear that the license suspensions commence “after release from confinement” or “after release from imprisonment.”

Idaho Code § 18-8005 sets forth the penalties for DUI. The statute states, in pertinent part, that any person who pleads guilty or is found guilty of violating § 18-8004(1)(a), (b), or (c),

and who has one prior similar conviction within ten years, is guilty of a misdemeanor, and, among other things, “[s]hall surrender his driver’s license or permit to the court” and “[s]hall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year *after release from confinement . . .*” I.C. § 18-8005(4)(d), (e) (emphasis added). Any person who pleads guilty or is found guilty of violating § 18-8004(1)(a), (b), or (c), and who has two or more prior similar convictions within ten years, is guilty of a felony and, among other things, “[s]hall surrender his driver’s license or permit to the court” and “[s]hall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year *after release from imprisonment . . .* and may have his driving privileges suspended by the court for an additional period not to exceed four (4) years . . .” I.C. § 18-8005(6)(c), (d) (emphasis added).

Idaho Code § 18-8004C sets forth the penalties for driving under the influence of alcohol with an excessive alcohol concentration. The statute states, in pertinent part, that any person who pleads guilty or is found guilty of violating § 18-8004(1)(a) for the first time, but who has an alcohol concentration of 0.20 or above, shall be guilty of a misdemeanor and, among other things, “[s]hall surrender his driver’s license or permit to the court,” and “[s]hall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year *after release from confinement . . .*” I.C. § 18-8004C(1)(d), (e) (emphasis added). Any person who pleads guilty or is found guilty of violating § 18-8004 for a second or subsequent offense shall be guilty of a felony and, among other things, “[s]hall surrender his driver’s license or permit to the court,” and “[s]hall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year *after release from imprisonment*, and may have his driving privileges suspended by the court for a period not to exceed five (5) years *after release from imprisonment . . .*” I.C. § 18-8004C(2)(c), (d) (emphasis added).

The DUI statutes discussed above make clear that the Legislature knows what language to use to start a license suspension at the time a defendant is released from incarceration. The Legislature did not use the qualifiers “after release from confinement” or “after release from imprisonment” in section 49-1404(3). That is because the Legislature intended that a license suspension for felony eluding commence upon the entry of the judgment of conviction.

The district court believed it “does not . . . make sense to allow someone to serve a driver’s license suspension while they’re in an institution where they cannot, in fact, drive anyway.” (1/25/19 Tr., p.16, Ls.13-17.) The district court was wrong as a matter of fact and law. As a matter of fact, the opportunities available to Mr. Coniconde *are* limited by his lack of a driver’s license even while he is incarcerated. He explained to the district court at the Rule 35 hearing that “there are multiple driving jobs available for inmates providing they have valid licenses such as plow driving and driving other inmates to and from work details” (1/25/19 Tr., p.18, Ls.7-12.) As a matter of law, the district court wrongly interpreted the statute to provide it with discretion to determine the start date for Mr. Coniconde’s license suspension. The statute provides the district court with discretion to determine the length of a license suspension (from one to three years), but not with discretion to determine the start date for that suspension.

If this Court believes, “after examining the text, context, history, and policy of the statute,” that there is still an “interpretive tie” regarding the start date for the running of a license suspension under section 49-1404(3), the tie must be resolved in favor of the defendant under the rule of lenity. *State v. Trusdall*, 155 Idaho 965, 969 (Ct. App. 2014); *see also State v. Anderson*, 145 Idaho 99, 103 (2008) (“The rule of lenity states that criminal statutes must be strictly construed in favor of defendants.”) (quotation marks and citation omitted); *Brown v. State*, 137

Idaho 529, 536 (Ct. App. 2002) (stating that “to the extent the theft statute is ambiguous, the rule of lenity compels us to construe it in favor of the accused”).

CONCLUSION

For the reasons stated above, Mr. Coniconde respectfully requests that the Court vacate his judgment of conviction, as amended by the order amending judgment, and remand this case to the district court with instructions to amend his judgment of conviction to reflect that his 18-month license suspension commenced on the date of his conviction.

DATED this 9th day of May, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas