

Case Summary

Richard Newman appeals the trial court's 180-day suspension of his driver's license. We affirm.

Issue

The sole restated issue is whether the trial court properly suspended Newman's driver's license.

Facts

On April 19, 2006, Newman was a passenger in a vehicle that police pulled over. After police found methamphetamine in the vehicle, the State charged Newman with Class D felony possession of methamphetamine under Indiana Code Section 35-48-4-6. Effective July 1, 2006, the General Assembly recodified the crime of possession of methamphetamine to Indiana Code Section 35-48-4-6.1.

After a number of continuances for various reasons, the trial court entered judgment on Newman's guilty plea on July 16, 2008. The trial court sentenced Newman to one and one-half years executed. It also suspended Newman's driver's license for 180 days, pursuant to Indiana Code Section 35-48-4-15(a). That statute mandates an automatic license suspension of at least six months if a person commits a crime under Indiana Code Section 35-48-4-6, among other sections, and a vehicle was used in the commission of the offense. The statute is silent as to offenses under Indiana Code Section 35-48-4-6.1.

Newman now appeals his license suspension.

Analysis

The State first argues that Newman's appeal is moot, pointing out that more than 180 days have now passed since the trial court's order of July 16, 2008. Once a defendant's sentence has been served, the validity of that sentence ordinarily is a moot question. Irwin v. State, 744 N.E.2d 565, 568 (Ind. Ct. App. 2001). We note that it is odd to consider Newman's license suspension as having begun on July 16, 2008, when he was sentenced to a year and a half in prison and having a valid driver's license would be meaningless. There is nothing in the record to indicate that the suspension did not begin on that date, however. The deterrent effect of a license suspension on one who is incarcerated is problematic at best.

We still conclude the trial court was required to suspend Newman's license for at least six months. "Generally, courts must sentence defendants under the statute in effect at the time the defendant committed the offense." Palmer v. State, 679 N.E.2d 887, 892 (Ind. 1997). If, however, the legislature enacts an ameliorative amendment without including a specific savings clause, the new statute will apply to all those sentenced after its effective date. Id. A legislative enactment is ameliorative if the maximum penalty under the new version of the statute is shorter than the maximum penalty under the old version of the statute. Hellums v. State, 758 N.E.2d 1027, 1029 (Ind. Ct. App. 2001).

As noted, Indiana Code Section 35-48-4-15(a) provides in part:

If a person is convicted of an offense under section . . . 6 . . . of this chapter [. . . 35-48-4-6 . . .] . . . and the court finds that a motor vehicle was used in the commission of the offense,

the court shall, in addition to any other order the court enters, order that the person's:

- (1) operator's license be suspended;
- (2) existing motor vehicle registrations be suspended; and
- (3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

This statute was in existence at the time Newman committed this offense on April 19, 2006. Also, on that date possession of methamphetamine was criminalized by Indiana Code Section 35-48-4-6.

On March 24, 2006, the governor approved Public Law 151-2006. This bill, among other things, recodified the crime of possession of methamphetamine to Indiana Code Section 35-48-4-6.1 while keeping Section 35-48-4-6 to separately criminalize possession of cocaine and schedule I and II narcotics. There was not then, nor has there ever been, a corresponding amendment to Indiana Code Section 35-48-4-15 to include possession of methamphetamine under Section 35-48-4-6.1 among the offenses that require automatic license suspension. However, Section 29 of Public Law 151-2006 states that it is effective July 1, 2006, and further states: "IC 35-48-4-1.1 and IC 35-48-4-6.1, both as added by this act, and . . . IC 35-48-4-6, . . . as amended by this act, apply only to crimes committed after June 30, 2006."

We believe Section 29 of Public Law 151-2006 constitutes a savings clause demonstrating the legislature's clear intent that any attendant penalties for possession of methamphetamine committed before July 1, 2006, should be determined by reference to its codification in Section 35-48-4-6. Thus, regardless of whether the legislature's failure to amend Section 35-48-4-15(a) to reflect the addition of Section 35-48-4-6.1 was intentional or an oversight, Newman is not entitled to rely on the doctrine of amelioration.

Conclusion

The trial court appropriately suspended Newman's driver's license in accordance with the statutes in effect at the time he committed the crime of possession of methamphetamine. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.