STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN EDWARD GERSONDE,

Defendant-Appellant.

UNPUBLISHED
December 9, 1997

No. 198264
Berrien Circuit Court
LC No. 96-000739 FD

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(1), (7); MSA 9.2325(1), (7), and was sentenced to thirty-six to sixty months' imprisonment. He appeals as of right. We affirm.

Defendant was arrested for drunk driving on January 11, 1996, and he was subsequently cited for violation of three Benton Harbor city ordinances: OUIL/UBAL; driving without a valid operator's license; and driving without wearing a seat belt. Pursuant to an agreement with a Berrien County assistant prosecuting attorney, defendant pleaded guilty to the misdemeanor OUIL ordinance violation in exchange for the dismissal of the other two city ordinance violations. Four days after the district court accepted the plea, but before defendant was sentenced, the city attorney advised the judge that the city wished to dismiss the three ordinance violations in order to prosecute defendant for the felony offense of OUIL-third in circuit court. The district court set aside defendant's ordinance violation plea without objection by defendant, and defendant did not appeal. He was later found guilty of OUIL-third following a circuit court bench trial.

On appeal, defendant first claims that the district court lacked the authority to sua sponte vacate defendant's ordinance violation guilty plea. Defendant did not raise this issue in the district court or the circuit court; it therefore is not properly preserved for appellate review. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995).

Defendant next contends that bringing the OUIL-third charge after the district court had accepted his ordinance violation plea violated his right to be free from double jeopardy. We disagree.

The protections of the double jeopardy clause are triggered once jeopardy has attached. *People v Thompson*, 424 Mich 118, 122; 379 NW2d 49 (1985). The rule in Michigan is that, in the case of a guilty plea, jeopardy does not attach until the sentence is imposed. *People v Leonard*, 144 Mich App 492, 494-495; 375 NW2d 745 (1985); *People v Burt*, 29 Mich App 275, 277; 185 NW2d 207, 208 (1970). Because defendant was never sentenced in district court, jeopardy did not attach and thus the later prosecution for OUIL-third was not in violation of defendant's double jeopardy protections.

Defendant argues that even under *Leonard* and *Burt*, *supra*, jeopardy attached to his OUIL-first plea because his driving privileges were immediately revoked, so that part of his sentence had been imposed. This argument is also without merit. Revocation is an administrative action to protect the public, not a punishment of the driver. *Johnson v Secretary of State*, 224 Mich App 158, 162-163; 568 NW2d 373 (1997); *Matheson v Secretary of State*, 170 Mich App 216, 220-221; 428 NW2d 31 (1988). Consequently, no part of defendant's sentence had been imposed, and jeopardy did not attach.

Finally, defendant contends that because OUIL-first is a lesser included offense of OUIL-third, jeopardy had attached. This argument is also without merit. Although it is true that a conviction of a lesser included offense implicitly acquits a defendant of the greater offense and precludes reinstatement of the greater charges on retrial, *People v Garcia (After Remand)*, 203 Mich App 420, 424; 513 NW2d 425 (1994), aff'd 448 Mich 442; 531 NW2d 683 (1995), defendant in this case was not "convicted" of the lesser offense because his guilty plea was vacated before sentencing. In the absence of a conviction, there was no double jeopardy violation.

Affirmed.

/s/ Michael R. Smolenski
/s/ Barbara B. MacKenzie

I concur in result only.

/s/ Janet T. Neff