

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

JUDITH C. GUEST,	)	
Appellant,	)	
	)	
v.	)	C.A. No. 0711020365
	)	
	)	
STATE OF DELAWARE	)	
Appellee.	)	

Submitted: June 15, 2009  
Decided: September 4, 2009

Upon Appeal from the Court of Common Pleas of the State of Delaware in  
and for New Castle County: **AFFIRMED.**

**OPINION**

Jerome M. Capone, Esquire, 1823 West 16<sup>th</sup> Street, Wilmington, Delaware,  
19806, Attorney for Appellant.

Andrew J. Vella, Deputy Attorney General, 820 North French Street, 7<sup>th</sup>  
Floor, Wilmington, Delaware, 19801, Attorney for Appellee.

**Jurden, J.**

## I. INTRODUCTION

This appeal arises from the bench trial conviction of Judith Guest (“Guest”) in the Court of Common Pleas on the charge of Driving Vehicle While License is Suspended or Revoked (“Driving While Suspended”).<sup>1</sup> For the reasons set forth below, this Court **AFFIRMS** the decision of the Court of Common Pleas.

## II. STATEMENT OF FACTS

Guest was seen driving out of the New Castle County Courthouse garage on October 22, 2007, by Capitol Police Officer James Wilhelm (“Wilhelm”).<sup>2</sup> Wilhelm knew that Guest’s license had been suspended in September 2007 as a result of a vehicular homicide charge.<sup>3</sup> Wilhelm stopped Guest and issued her a summons for Driving While Suspended.<sup>4</sup>

At trial, in addition to the testimony of Wilhelm, the State offered into evidence a certified copy of Guest’s driving record along with the Official Notice and Order of Revocation (“the Revocation”).<sup>5</sup> Guest did not object to the admission of the driving record or the Revocation. Guest was found

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<sup>1</sup> 21 *Del C.* § 2756.

<sup>2</sup> Transcript of Record (“Tr. of R.”) at 10, Feb. 5, 2009.

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* at 10.

<sup>5</sup> *Id.* at 10, 12.

guilty of Driving While Suspended and sentenced to six months at Level V and a fine of \$500.00.<sup>6</sup>

### III. STANDARD OF REVIEW

Statutory authority provides appellate review by the Superior Court of decisions rendered by the Court of Common Pleas.<sup>7</sup> In reviewing appeals from the Court of Common Pleas, this Court sits as an intermediate appellate court.<sup>8</sup> Accordingly, its purpose reflects that of the Supreme Court.<sup>9</sup> The role of this Court is to “correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process.”<sup>10</sup> Therefore, questions of law are reviewed *de novo*,<sup>11</sup> while factual findings are reviewed to verify that they are supported by sufficient evidence.<sup>12</sup> In addition, when sitting as an appellate body, this Court reviews the lower court’s evidentiary rulings using an abuse of discretion standard.<sup>13</sup> However, when a party fails to raise and preserve an objection to the submission of evidence at trial, the “plain error” standard, a narrower

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<sup>6</sup> Tr. of R. at 24.

<sup>7</sup> 11 Del. C. § 5301; *see also* DEL. CONST. Art. IV, § 28.

<sup>8</sup> *Disabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002) (citing *State v. Richards*, 1998 WL 732960, at \* 1 (Del. Super. May 28, 1998)).

<sup>9</sup> *Shipkowski v. State*, 1989 WL 89667, at \*1 (Del. Super. July 28, 1989).

<sup>10</sup> *Id.* at 1220 (citing *Steelman v. State*, 2000 WL 972663, at \* 1 (Del. Super. May 30, 2000)).

<sup>11</sup> *Sutherland v. State*, 2006 WL 1680027, at \*2 (Del. Super. April 28, 2006).

<sup>12</sup> *State v. Cagle*, 332 A.2d 140, 142-3 (Del. 1974).

<sup>13</sup> *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994).

standard, is applied.<sup>14</sup> Pursuant to the plain error standard, the error complained of must be so clearly prejudicial to an accused, and must clearly deprive an accused of a substantial right, that it jeopardizes both the fairness of and the integrity of the trial process.<sup>15</sup>

#### IV. DISCUSSION

##### A. Notice of Revocation

On appeal, Guest first argues that the State failed to provide evidence that she received proper notice of the Revocation as required by 21 *Del. C.* §2736.<sup>16</sup> Guest maintains that the Revocation, which was submitted into evidence by the State, was not sufficient to establish that she received notice that her license was suspended as of April 20, 2007.<sup>17</sup> According to Guest, the Revocation is “merely a notice to a driver that his/her license will be suspended in 15 days, unless a hearing is requested.”<sup>18</sup> Therefore, Guest asserts that the earliest her suspension could have gone into effect was May 5, 2007, not April 20, 2007, as determined by the trial court.<sup>19</sup>

Delaware law states, “[w]henver a license is suspended or revoked... notice shall be given . . . either by personal delivery thereof to the person to

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<sup>14</sup> *Trump v. State*, 753 A.2d 963, 970-971 (Del. 2000) (citing *Wainwright v. State*, 504 A.2d 1096, 1100).

<sup>15</sup> *Id.* at 971.

<sup>16</sup> Appellant’s Opening Brief (“Opening Brief”), Docket Item (“D.I.”) 9 at 2-3, May 13, 2009.

<sup>17</sup> Appellant’s Reply Brief (“Reply Brief”), D. I. 12 at 3, June 15, 2009.

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> *Id.* at 3.

be so notified or by deposit of such notice in the United States mail . . . .”<sup>20</sup>

At trial, the State submitted into evidence a copy of the Revocation personally delivered to Guest on April 20, 2007.<sup>21</sup> The Revocation states: “[y]ou are hereby notified that the Secretary will revoke your driver’s license and/or driving privileges in this state. This revocation shall become effective fifteen (15) days from the issue date above, unless you request a hearing . . . .”<sup>22</sup> The Revocation further advises that if no request for a hearing is filed by the individual within the fifteen-day period, the revocation becomes effective immediately.

A review of the record establishes that there is sufficient evidence to demonstrate that Guest received notice of her license suspension in accordance with 21 *Del. C.* § 2736. The State’s submission of the Revocation was sufficient to prove that Guest received notice of the license suspension. Delaware law provides, “proof of the giving of notice of suspension or revocation . . . may be made by . . . an affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof.”<sup>23</sup> Under 21 *Del. C.* § 2736(c)(2), the State proved that Guest received notice of the

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<sup>20</sup> 21 *Del. C.* § 2736(a)-(b).

<sup>21</sup> Opening Brief, D.I. 9 at Ex. A-2.

<sup>22</sup> *Id.*

<sup>23</sup> 21 *Del. C.* § 2736(c).

Revocation by producing and submitting an official copy of the Revocation signed by Guest, along with a supporting affidavit by an employee of the Department of Transportation.<sup>24</sup> Guest's act of signing the Revocation establishes that she received the Revocation on April 20, 2007 by personal delivery.<sup>25</sup> There is no evidence that Guest requested a hearing within fifteen days after receipt of the Revocation, or at any time for that matter, thus making the revocation of Guest's license effective immediately on May 5, 2007.<sup>26</sup> The affidavit submitted by the State certifies that a true and accurate copy of Guest's Revocation is attached as contained within the records of the Division of Motor Vehicles.<sup>27</sup> Guest's notice of her license suspension is further evidenced by her admissions at trial. Guest admitted to the trial court, "I knew that I was doing something that was wrong" referencing driving to the courthouse on October 22, 2007.<sup>28</sup>

It is clear from the record that Guest was aware that her license was revoked, and that she was not permitted to drive on October 22, 2007, at which time she was cited for driving with a suspended license. The trial

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<sup>24</sup> Opening Brief, D.I. 9 at Ex. A-1, A-2.

<sup>25</sup> The trial judge misspoke in stating that Guest received the Revocation via U.S. mail. Rather, Guest received notice of the revocation by personal delivery when she signed the Revocation on April 20, 2007.

<sup>26</sup> As noted above, the Revocation was personally delivered to Guest on April 20, 2007, and thus, the revocation became effective fifteen days thereafter on May 5, 2007.

<sup>27</sup> *Id.* at Ex. A-1.

<sup>28</sup> Tr. of R. at 19.

judge did not err in ruling that Guest received proper notice of the Revocation.<sup>29</sup>

B. Sentencing Defendant With A “Closed Mind”

Guest argues that the trial judge in the Court of Common Pleas sentenced her with a “closed mind.”<sup>30</sup> Guest claims that she received a “double punishment” for the charge of Driving While Suspended.<sup>31</sup> Guest asserts that she received the maximum sentence for the Vehicular Homicide charge (three years at Level V), in part, because the sentencing judge considered the fact that Guest was charged with Driving While Suspended while she was awaiting trial for Vehicular Homicide.<sup>32</sup> Guest also received the maximum sentence of six months at Level V for the Driving While Suspended charge, which Guest argues, is a “double punishment.”<sup>33</sup>

Under Delaware law, a sentencing judge has broad discretion to determine the appropriate sentence.<sup>34</sup> Appellate review of criminal sentences is limited to a determination that the sentence is within the

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<sup>29</sup> While Guest did not initially argue that the trial judge committed “plain error” in her Opening Brief, Guest addressed it in her Reply Brief in response to the State’s Answering Brief. The trial judge did not commit “plain error” by allowing the Revocation to be submitted into evidence. The submission of the Revocation was not clearly prejudicial to Guest to deprive her of any substantial right because both Guest and her attorney admitted that Guest knew her license had been suspended and that she was not permitted to drive on October 22, 2007.

<sup>30</sup> Opening Brief, D.I. 9 at 7

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 7-8.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> See *Siple v. State*, 701 A.2d 79, 84 (Del. 1997).

statutory limits.<sup>35</sup> Under 21 *Del. C.* § 2756, “[a]ny person whose driver’s license or driving privileges have been suspended or revoked and who drives any motor vehicle . . . during the period of suspension or revocation shall . . . be imprisoned not less than 30 days nor more than 6 months.”<sup>36</sup>

“A Judge sentences with a closed mind when the sentence is based on a preconceived bias without consideration of the nature of the offense of the character of the defendant.”<sup>37</sup> In the instant case, it is clear that the trial judge carefully considered the arguments presented by both parties. Guest was permitted to speak on her own behalf. The judge carefully weighed the nature of the offense and the aggravating and mitigating factors in the case. There is nothing in the record that supports the conclusion that the judge had a preconceived bias. In fact, the trial judge explicitly noted that he would not have “known that the person who was killed in [the Vehicular Homicide] accident was [of] some relation to anyone from the Department of Justice had the defendant herself...” not told him.<sup>38</sup> The trial judge sentenced Guest within the appropriate statutory limits, and not with a “closed mind.”

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<sup>35</sup> *Id.* at 83 (citing *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992)).

<sup>36</sup> 21 *Del. C.* § 2756.

<sup>37</sup> *Weston v. State*, 832 A.3d 742, 746 (Del. 2003).

<sup>38</sup> Tr. of R. at 24-25.

**V. CONCLUSION**

For the aforementioned reasons, the decision of the Court of Common Pleas is **AFFIRMED**.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge

cc: Prothonotary (original)