

[Cite as *State v. Moore*, 2010-Ohio-1612.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY**

|                     |   |                               |
|---------------------|---|-------------------------------|
| STATE OF OHIO       | : |                               |
|                     | : | Appellate Case No. 2009-CA-48 |
| Plaintiff-Appellee  | : | Trial Court Case No. 08-CR-46 |
| v.                  | : |                               |
|                     | : |                               |
| BRIAN D. MOORE      | : | (Criminal                     |
|                     | : | Appeal from                   |
| Defendant-Appellant | : | Common Pleas Court)           |

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OPINION

Rendered on the 9<sup>th</sup> day of April, 2010.

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BROGAN, J.

{¶ 1} Brian Moore has appealed a trial court's refusal to terminate his administrative license suspension after he pleaded guilty to OVI. We agree that the court erred by failing to do so.

{¶ 2} In January 2008, Moore was arrested for driving his vehicle while under

the influence of alcohol. When the police officer asked Moore to submit to a chemical test, he refused. Moore later pleaded guilty to a charge of operating a vehicle under the influence of alcohol (OVI) in violation of R.C. 4511.19(A)(1)(a). At the sentencing hearing in April 2008, the trial court said that Moore has an extensive criminal history containing numerous alcohol-related offenses, including five prior OVI convictions. The date of only one prior conviction is revealed in the record—a felony OVI in 2002. The trial court sentenced Moore to 2 years in prison and suspended his driver’s license for 10 years.

{¶ 3} Because Moore refused to take the chemical test, the arresting officer seized his driver’s license and forwarded it to the Ohio Bureau of Motor Vehicles (BMV), which had the effect of imposing a pretrial administrative license suspension (ALS). See R.C. 4511.192. The length of the ALS is not stated in the record, but, since Moore was convicted of at least one OVI within the last six years, the ALS was at least 2 years. See R.C. 4511.191(B)(1)(b). Around June 2009, Moore learned that the ALS was still in effect. Thinking it should have been terminated when he pleaded guilty, Moore filed a motion asking the trial court to order the BMV to terminate the ALS. The court overruled the motion, and Moore appealed.

{¶ 4} In a single assignment of error,<sup>1</sup> Moore contends that under *State v. Gustafson* (1996), 76 Ohio St.3d 425, continued recognition of the ALS after his guilty

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<sup>1</sup>“THE TRIAL COURT ERRED BY ALLOWING THE ADMINISTRATIVE LAW SUSPENSION (ALS) TO REMAIN PENDING AGAINST BRIAN MOORE IN THIS MATTER IN VIOLATION OF THE OHIO CONSTITUTION AND APPLICABLE OHIO SUPREME COURT CASE WHEN A TEN (10) YEAR JUDICIAL SUSPENSION OF SAID LICENSE WAS ISSUED AGAINST APPELLANT SUBSEQUENTLY AS PART OF SENTENCING FOR VIOLATING ORC 4511.19(A).”

plea placed him in double jeopardy. The state agrees with Moore's application of *Gustafson*, but it argues that *Gustafson* was implicitly superceded by subsequent statutory amendments. After filing its brief, however, the state commendably filed a Notice of Supplemental Authority, pointing to a recent Ohio Supreme Court decision that undermines the state's argument, *State v. Hoover*, 123 Ohio St.3d 418, 2009-Ohio-4993. *Hoover* makes clear that *Gustafson* has not been superceded in the way the state, initially at least, thought. In *Hoover*, the Court said, "Both an ALS and a criminal prosecution may result from driving under the influence of drugs or alcohol and refusing to take the chemical test." *Hoover*, at ¶25. Citing *Gustafson*, *Hoover* continued, "After a DUI [OVI] conviction, however, the ALS terminates, and the license suspension becomes part of the DUI sentence." *Id.*, citing *Gustafson*, at paragraphs four and five of the syllabus.

{¶ 5} The Court's words in *Hoover* reflect not only *Gustafson*'s holdings but also R.C. 4511.191. Division (B)(2) of that section tells the BMV to terminate a chemical-test-refusal ALS when the defendant pleads guilty to the underlying OVI: "The registrar shall terminate a suspension of the driver's \* \* \* license \* \* \* imposed pursuant to division (B)(1) of this section upon receipt of notice that the person has entered a plea of guilty to \* \* \* operating a vehicle in violation of section 4511.19 of the Revised Code \* \* \*, if the offense for which the \* \* \* plea is entered arose from the same incident that led to the suspension or denial." R.C. 4511.191(B)(2).

{¶ 6} Based on *Gustafson* and R.C. 4511.191(B)(2), therefore, when Moore pleaded guilty to the underlying OVI charge, the trial court should have terminated the ALS. The trial court's failure to do so placed Moore in double jeopardy, and the court's

subsequent refusal to do so is in error. See *State v. Overhold* (April 12, 2000), Medina App. No. 2980-M, dismissed, appeal not allowed, (2000), 90 Ohio St.3d 1403.

{¶ 7} The single assignment of error is sustained.

{¶ 8} The trial court's judgment is Reversed, and the cause is Remanded with instructions to issue an order to the BMV terminating Moore's ALS, retroactive to the date of his guilty plea to the OVI charge.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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