[Cite as *State v. Boukissen*, 2015-Ohio-2973.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio — Court of Appeals No. S-14-046

Appellee — Trial Court No. CRB 1400571 C

v.

William C. Boukissen, II — **DECISION AND JUDGMENT**

Appellant — Decided: July 24, 2015

* * * * *

Andrew R. Mayle, Jeremiah S. Ray and Ronald J. Mayle,
for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal by William C. Boukissen, II, of his sentence on a conviction for possession of marihuana, a violation of R.C. 2925.11(A) and a minor misdemeanor under R.C. 2925.11(C)(3)(a). In an October 17, 2014 judgment, the Fremont Municipal Court sentenced appellant to pay a $150 fine and suspended appellant's driver's license for 180 days.

{¶ 2} This is an accelerated appeal. Appellant has filed a timely appeal of his sentence to this court and asserts one assignment of error on appeal. He contends that the trial court's judgment suspending his driver's license is contrary to law and to the plain meaning of R.C. 2925.11(E):

> Assignment of Error No. 1: Because a driver's license suspension is only applicable to an offender sentenced for violating R.C. 2925.11(A) when the suspension is "in addition to" a prison or jail term authorized or required by law, the trial court erred when it imposed a suspension in this case for a minor misdemeanor conviction – where neither jail nor prison are authorized or required.

{¶ 3} "'In construing a statute, a court's paramount concern is the legislative intent in enacting the statute.' *State ex rel. Richard v. Bd. of Trustees of Police & Firemen's Disability & Pension Fund* (1994), 69 Ohio St.3d 409, 411, 632 N.E.2d 1292, 1295." *Rice v. Certain Teed Corp.*, 84 Ohio St.3d 417, 418-419, 704 N.E.2d 1217 (1999). "[W]e first must look at the language of the statute itself. *Provident Bank v. Wood*, 36 Ohio St.2d 101, 105, 304 N.E.2d 378 (1973). If the language is clear and unambiguous, we must apply it as written." *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175, ¶ 9.

{¶ 4} An understanding of the structure of R.C. 2925.11(E) is helpful in considering appellant's argument. R.C. 2925.11(E) begins with two "in addition to" statements followed by an instruction. The instruction provides: "the court that

sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender" (followed by three subparagraphs (R.C. 2925.11(E)(1)-(3)). One subparagraph is R.C. 2925.11(E)(2). It states "[the] court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit."

{¶ 5} R.C. 2925.11(E)(1)-(3) reads in full:

> (E) *In addition to any prison term or jail term authorized or required by division (C) of this section and sections 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section, sections 2929.11 to 2929.18, or sections 2929.21 to 2929.28 of the Revised Code*, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section *shall do all of the following that are applicable regarding the offender*:
>
> (1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.
>
> (b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other

fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a) of this section.

(2) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code. (Emphasis added.)

{¶ 6} Appellant contends a plain reading of the statute demonstrates that driver's license suspensions are not mandatory for every drug possession conviction under R.C. 2925.11(A). He contends the "in addition to" language of the statute limits the applicability of suspensions under R.C. 2925.11(E)(2) to circumstances where a prison term or jail time is authorized or required for the underlying offense. Appellant contends

that it was error to impose a driver's license suspension in this case because sentences for minor misdemeanors do not include any period of incarceration. *See* R.C. 2929.24. Appellant has not cited any authority supporting his proposed construction of R.C. 2925.11(E).

{¶ 7} We disagree. In our view, the phrase "in addition to" is not language of limitation. In connotes something added to what is already in place. The language treats license suspension as an additional collateral consequence in addition to a sentence under applicable Ohio sentencing laws for an R.C. 2925.11(A) conviction. The statute does not limit license suspensions to circumstances where the offender's violation of R.C. 2925.11(A) was of a type for which a prison term or jail term was authorized or imposed.

{¶ 8} Specifically, we interpret the words "[i]n addition to any prison term or jail term authorized or required by division (C) of this section and sections 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section, sections 2929.11 to 2929.18, or sections 2929.21 to 2929.28 of the Revised Code" to authorize imposition of a license suspension under R.C. 2925.11(E)(2) even where the R.C. 2915.11(A) offense was a minor misdemeanor.

Statutory History

{¶ 9} Even were we to consider the statute ambiguous, its legislative history, including former statutory provisions, aids in its construction. *See* R.C. 1.49(C) and (D).

{¶ 10} "In addition to" language was introduced into R.C. 2925.11(E) beginning with statutory changes effective on July 1, 1996. *See* 1996 S.B. No. 269; 1995 S.B. No. 2. The prior version of the statute, R.C. 2925.11(F), had been interpreted as providing for mandatory license suspension for minor misdemeanor violations of R.C. 2925.11(A). *State v. VanPelt*, 3d Dist. Crawford No. 3-95-18, 1996 WL 65530, *2 (Feb. 1, 1996); *State v. Keene*, 3d Dist. Crawford No. 3-95-19, 1996 WL 65533 (Feb. 2, 1996). In *Akron v. Wait*, 9th Dist. Summit No. 17373, 1996 WL 62111 (Feb. 14, 1996), the Ninth District Court of Appeals upheld a constitutional challenge to a six-month license suspension under R.C. 2925.11(F) for a minor misdemeanor conviction under R.C. 2925.11(A) for possession of a small amount of marihuana. *Id.* at *1.

{¶ 11} Beginning July 1, 1996, the statute was modified to provide:

> (E) *In addition* to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and *in addition to* any other sanction that is imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the *following that are applicable regarding the offender*:
>
> * * *
>
> (2) The court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any

person who is convicted of or has pleaded guilty to a violation of this section. (Emphasis added.) 1996 S.B. No. 269; 1995 S.B. No. 2.

This wording remained in effect until statutory changes enacted under 2002 S.B. No. 123 and 2002 H.B. No. 490, effective January 1, 2004. These changes enacted the present version of R.C. 2925.11(E).

{¶ 12} The Eight District Court of Appeals considered the July 1, 1996 "in addition to" version of the statute in *Metro. Park Dist. v. Pauch*, 8th Dist. Cuyahoga No. 74792, 1999 WL 1204878 (Dec. 16, 1999). The case involved challenges to guilty pleas on two offenses: (1) a minor misdemeanor drug abuse charge under R.C. 2925.11(C)(3)(a) based upon possession and use of a marihuana joint and (2) possession of drug paraphernalia, a violation of R.C. 2925.14(C)(1). *Id.* at *1. The appellant in *Pauch* argued that his guilty pleas were not knowingly and intelligently made because the trial judge failed to advise him, before accepting his guilty pleas, of mandatory driver's license suspensions from six month to five years for violation of both drug statutes.

{¶ 13} The court concluded that the trial court did not warn the appellant prior to sentencing "of the statutorily mandated penalty contained in *both* the drug paraphernalia statute, R.C. 2925.22(G), and the drug possession statute, R.C. 2925.11(E)(2) requiring the suspension of his driver's license from six months to five years." (Emphasis in the original.) *Id.* at *4. The court of appeals reversed both convictions and vacated both guilty pleas. *Id.*

{¶ 14} The Eleventh District Court of Appeals considered the 1996 version of R.C. 2925.11(E) in *State v. Fisher*, 11th Dist. Portage No. 97-P-0026, 1997 WL 799912, *2 (Dec. 26, 1997). The case involved a minor misdemeanor conviction for violation of R.C. 2925.11(A) for possession of .372 grams of marihuana. *Id.* at *1. The court of appeals upheld the statute against a constitutional challenge asserting the mandatory license suspensions for convictions involving possession of small amounts of marihuana violated due process and the Eighth Amendment's protections against cruel and unusual punishment. *Id.* at *3-4.

{¶ 15} In *State v. Mihely*, 11th Dist. Ashtabula Nos. 2001-A-0083 and 2001-A-0084, 2002-Ohio-6939, the Eleventh District Court of Appeals considered another constitutional challenge to the 1996 version of R.C. 2925.11(E) and (E)(2). The appellant argued in the case that "R.C. 2925.11 was unconstitutional when a court was required to suspend a person's driver's license for a minor misdemeanor drug offense." *Id.* at ¶ 18. The court of appeals upheld the constitutionality of the statute. *Id.* at ¶ 19.

{¶ 16} The "in addition to" language of R.C. 2925.11(E) was subsequently modified to its present form effective January 1, 2004. *See* 2002 S.B. No. 123; 2002 H.B. No. 490. The change inserted "or jail term," "2929.22, 2929.24, and 2929.25" and "or sections 2929.21 to 2929.28" to R.C. 2925.11(E). The original "in addition to" language otherwise remained. Although there have been statutory modifications to R.C. 2925.11 since, those changes have not included any modifications to R.C. 2925.11(E) or 2925.11(E)(2) from the January 1, 2004 version of the statute.

{¶ 17} We conclude that the statutory history of R.C. 2925.11, including prior court decisions, demonstrate that historically driver's license suspensions for violations of R.C. 2925.11(A) have been applied to minor misdemeanor convictions.

{¶ 18} We conclude that the plain meaning of R.C. 2925.11(E) and (E)(2) demonstrates that the "in addition to" introductory phrases to R.C. 2925.11 do not act to limit the license suspension provisions of R.C. 2925.11(E)(2) to R.C. 2925.11(A) offenses for which incarceration is authorized or has been imposed. Even were the statute considered ambiguous on the issue, the statutory history demonstrates that R.C. 2925.11(E)(2) has been consistently interpreted as applying to minor misdemeanor violations of R.C. 2925.11(A).

{¶ 19} We find assignment of error No. 1 not well-taken.

{¶ 20} We affirm the judgment of the Fremont Municipal Court. We remand the case to the trial court for further proceedings, including the removal of the court's stay of execution on its judgment pending appeal. We order appellant to pay costs pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J.
CONCUR. _____
JUDGE