

[Cite as *In re D.E.*, 2010-Ohio-209.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN RE: :

D.E. : CASE NOS. CA2009-03-086
CA2009-03-087
CA2009-06-161

: OPINION
1/25/2010

:
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case Nos. JV2006-1272, JT2008-1765 and JV2008-3995

Robin N. Piper III, Butler County Prosecuting Attorney, Lina N. Alkamdawi,
Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-
6057, for appellee

Timothy Young, Ohio Public Defender, Angela Miller, Office of the Ohio Public
Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, for appellant

POWELL, J.

{¶1} Appellant, D.E., appeals his disposition from the Butler County Court of
Common Pleas, Juvenile Division, with regard to the suspension of his ability to apply
for a driver's license and the imposition of an order of restitution. We reverse and
remand the disposition for the reasons outlined below.

{¶2} Appellant admitted to and was adjudicated delinquent for the offense of aggravated vehicular homicide, a felony of the second degree if committed by an adult. Appellant was adjudicated a juvenile traffic offender for the offense of driving while under the influence of alcohol or drugs (OVI).¹ The delinquency and juvenile traffic complaints were filed after it was alleged that appellant, while driving under the influence of alcohol, crashed a vehicle, causing the death of his passenger. Appellant was 15 years of age at the time of the offense.

{¶3} Appellant's delinquency disposition included a commitment to the Ohio Department of Youth Services for a minimum term of 12 months, not to exceed his 21st birthday. The juvenile court also suspended appellant's right to apply for an operator's license from the date of the dispositional hearing in February 2009 until "12/31/2099." Appellant was ordered to pay restitution in an amount to be determined by probation. The juvenile court's order indicated that the probation department's determination of restitution would be final unless appellant timely requested a hearing on restitution.

{¶4} For the OVI traffic disposition, the juvenile court ordered that appellant's ability to apply for an operator's license be suspended from the date of the 2009 dispositional hearing until "2/08/2014," which is appellant's 21st birthday.

{¶5} Appellant's appeal and supplemental appeal were consolidated. Three assignments of error were presented for our review. We will consider the

1. Appellant also admitted to a violation of parole on unrelated facts. The juvenile court's entry states that four other traffic-related offenses, with which appellant was originally charged, were "merged" into the OVI offense. The record reflects that no pleas were entered on the four traffic-related offenses.

assignments of error out of order for ease of discussion.

{¶16} Assignment of Error No. 1:

{¶17} "THE BUTLER COUNTY JUVENILE COURT ABUSED ITS DISCRETION WHEN IT IMPOSED IMPROPER ORDERS OF DISPOSITION IN VIOLATION OF R.C. 2152.19[.]"

{¶18} Appellant's first issue under this assignment of error claims the juvenile court erred in imposing a delinquency disposition suspending appellant's right to apply for a driver's license for 90 years.

{¶19} We begin our review mindful that a juvenile court's disposition for a child adjudicated delinquent is a matter within the juvenile court's discretion. *In re T.H.*, Clermont App. No. CA2006-02-021, 2007-Ohio-352, ¶10. This court will not disturb such a disposition absent an abuse of discretion. *Id.*

{¶10} R.C. 2152.19, the juvenile code statute cited by appellant in his assignment of error, provides for additional orders of disposition for a juvenile adjudicated a delinquent child.

{¶11} R.C. 2152.19(B) indicates that if a juvenile is adjudicated delinquent for certain enumerated offenses, the juvenile court *shall* suspend the juvenile's license or temporary permit or suspend the ability to obtain such a permit. [Emphasis added.] The specific offenses listed in the statute are not applicable in the case at bar.

{¶12} R.C. 2152.19 also contains a provision that permits a juvenile court to impose any further disposition that the court finds proper. R.C. 2152.19(A)(8).

{¶13} A juvenile court may utilize R.C. 2152.19(A)(8) to prohibit a juvenile from applying for a driver's license when he is adjudicated delinquent by reason of

the offense of aggravated vehicular homicide. *In the Matter of T.S.*, Franklin App. No. 06AP-1163, 2007-Ohio-5085, ¶¶29-31, appeal not allowed 117 Ohio St.3d 1407, 2008-Ohio-565.

{¶14} Under the facts of *T.S.*, a 14-year-old juvenile, who did not possess a license, caused the death of another person while driving a vehicle. The *T.S.* court found that the juvenile court's disposition under R.C. 2152.19(A)(8), which prevented the juvenile from obtaining a driver's license until his 21st birthday, was directly related to the underlying conduct resulting in the aggravated vehicular homicide delinquency, and was reasonably calculated to achieve the purposes of juvenile dispositions, to wit: protecting the public and the juvenile, rehabilitating the juvenile, and holding the juvenile accountable. *Id.* at ¶¶3-5, 31; see R.C. 2152.01(A) and (B); cf. *In re G.M. Butler* App. No. CA2009-07-203, 2009-Ohio-6746, ¶¶21-23 (juvenile court has broad discretion to fashion a disposition for a delinquent child that comports with the overriding purposes for dispositions under R.C. Chapter 2152).

{¶15} We find the reasoning of the *T.S.* case persuasive and reject the argument that suspending a juvenile's ability to obtain a license under R.C. 2152.19(A)(8) renders the specific provisions of R.C. 2152.19(B) irrelevant. R.C. 2152.19(B) mandates a license suspension if specifically enumerated offenses are committed. R.C. 2152.19(A)(8) permits the juvenile court to act within its discretion in imposing additional dispositions, subject to review for an abuse of discretion. The suspension of the ability to apply for a license is clearly a reasonable use of the juvenile court's discretion under the facts of this case.

{¶16} Nevertheless, we find no authority for the juvenile court to impose a 90-

year or lifetime suspension of appellant's right to apply for a driver's license. See R.C. 2152.02(C)(6) (juvenile court has jurisdiction over person adjudicated delinquent or a juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age); see R.C. 2152.01(A)-(C); *In re R.K.*, Cuyahoga App. No. 84948, 2004-Ohio-6918, appeal not allowed 105 Ohio St.3d 1561, 2005-Ohio-2447, ¶16 (absent a specific statute that extends juvenile court jurisdiction beyond the age of 21--such as juvenile sex offender registrant or serious youthful offender provisions--Chapter 2152 limits jurisdiction to the age of 21 years).

{¶17} While the aggravated vehicular homicide statute of R.C. 2903.06 contains a provision for license suspensions to include a lifetime suspension, the juvenile code provides no indication that the limited jurisdiction of the juvenile court is extended for the purpose of imposing a lifetime license suspension. See *id.* Therefore, we refuse to permit such an extension, absent clear legal authority to do so. See R.C. 2152.02(C)(6); cf. *In re Finlaw* (1990), 69 Ohio App.3d 474, 476 (former juvenile dispositional statute authorizes dispositions not exceeding the child's attainment of 21 years of age; none of the provisions of the juvenile code permit the lifetime revocation of a juvenile's driver's license).

{¶18} While the juvenile court was within its discretion to impose a suspension on appellant's right to apply for a driver's license as an additional order of disposition on the delinquency finding, it did not do so within the constraints of R.C. 2152.01(C)(6). Accordingly, the juvenile court's order suspending appellant's ability to apply for a temporary permit or driver's license for 90 years was an abuse of discretion.

{¶19} Appellant's second issue under this assignment of error challenges the juvenile court's order of restitution when it failed to specify the amount owed.

{¶20} As we noted above, the juvenile court left the amount of restitution open to a determination by the juvenile probation department, noting that appellant could request a hearing if he disputed the amount determined. There is no indication in the record that a determination was made or that a restitution hearing was held.

{¶21} The state concedes and the record reflects that the juvenile court erred when it failed to order a specific amount of restitution. See *In the Matter of Brown* (June 24, 1998), Richland App. No. 97CA112, 1998 WL 430028 at *2; see *In re Boss B.*, Lucas App. No. L-07-1343, 2008-Ohio-2995, ¶17; see R.C. 2152.20. This matter must be remanded to the juvenile court to hold a restitution hearing.

{¶22} Appellant's first assignment of error is sustained.

{¶23} Supplemental Assignment of Error:

{¶24} "THE BUTLER COUNTY JUVENILE COURT ABUSED ITS DISCRETION WHEN IT IMPOSED IMPROPER ORDERS OF DISPOSITION."

{¶25} Appellant argues under this supplemental assignment of error that the juvenile court's traffic disposition was not authorized by law when it suspended appellant's right to apply for an operator's license for the OVI adjudication for five years from the date of the dispositional hearing.

{¶26} The state concedes error in regard to appellant's supplemental assignment of error, arguing that appellant already received a 90-year suspension of his right to apply for a license, and therefore, the juvenile court's traffic-offender disposition was "harmless error."

{¶27} R.C. 2152.21(B), states, in part, that if a juvenile is adjudicated a juvenile traffic offender for violation of the OVI statute, the juvenile court, in addition to any order of disposition made under division (A) of R.C. 2152.21, *shall* impose a class six suspension, which is a suspension for a definite period of three months to two years, of the temporary instruction permit, probationary driver's license or driver's license issued to the child. [Emphasis added.] See, also, R.C. 4510.02(A)(6).

{¶28} Appellant asserts that the juvenile court is not permitted to impose a suspension because the language of R.C. 2152.21 contemplates that the juvenile holds a temporary permit or license and appellant did not have a license or temporary permit to suspend. See *In re Kirby*, Richland App. Nos. 06-CA-6, 06-CA-91, 2008-Ohio-876, ¶37.

{¶29} "Suspend" or "suspension" with regard to a driver's license is defined as "the permanent or temporary withdrawal, by action of a court or the bureau of motor vehicles, of a driver's license, * * * temporary instruction permit, probationary license, * * * or the permanent or temporary withdrawal of the privilege to obtain a license, permit, or privilege of that type for the period of the suspension." R.C. 4510.01(H).

{¶30} Statutory law related to the possession or suspension of an operator's or driver's license clearly encompasses the ability to suspend the privilege to obtain a license, and therefore, we are not persuaded that appellant's unlicensed status prohibits the juvenile court from suspending his ability to apply for such a license under the juvenile traffic offender disposition statute.

{¶31} Appellant also argues that if this court determines that the juvenile court had the authority to suspend appellant's ability to apply for a license, it could do so

for a maximum period of two years. We agree.

{¶32} R.C. 2152.21(B) contemplates a license suspension up to two years, and therefore, the juvenile court erred in suspending for five years appellant's ability to apply for a driver's license in disposition of the traffic offense. Accordingly, appellant's supplemental assignment of error is sustained.

{¶33} Assignment of Error No. 2:

{¶34} "D.E. WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO: 1) OBJECT TO LIFETIME SUSPENSION AND; 2) REQUEST AN EVIDENTIARY HEARING REGARDING RESTITUTION."

{¶35} Appellant indicated that he was arguing this assignment of error in the alternative to his first assignment of error. Based upon our determination under appellant's first assignment of error, appellant's second assignment of error is moot.

{¶36} We note that the original juvenile complaint filed in the delinquency portion of the case alleged that appellant was delinquent for conduct constituting a violation of R.C. 2903.06(A)(1)(a) (as a result of committing OVI). This offense would be a felony of the second degree if committed by an adult. Some time thereafter, the record reflects that the charge was listed as R.C. 2903.06(A)(2), and the judgment entry also lists R.C. 2903.06(A)(2). We could not locate any indication of an amendment to this complaint. On remand of this case, the juvenile court is instructed to address the inconsistency in the record.

{¶37} The judgment on disposition is reversed and this cause is remanded for a new disposition hearing and a hearing on restitution.

BRESSLER, P.J., and HENDRICKSON, J., concur.