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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,636

TERRY LITE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Respondent's Brief on Jurisdiction

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PRELIMINARY STATEMENT

Terry Lite was the defendant below and shall be referred to as "petitioner," in this brief. The State of Florida shall be referred to as "respondent."

STATEMENT OF THE CASE AND FACTS

Respondent generally agrees with petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

This statute does not have wide ranging application. It only concerns those convicted of drug offenses and is hardly egregious punishment. The statute is constitutional.

ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION.

The decision in question is not one of great impact. It does not affect a large segment of the citizens of Florida. The statute is concerned only with those convicted of certain drug offenses. It is not a statute imposing a mandatory minimum or lopping on additional years of imprisonment for those convicted of such offenses. All the statute requires is that those convicted of drug offenses relinquish their driver's license until evaluated for drug treatment. If treatment is necessary, the suspension is continued until treatment is complete. From a practical standpoint, this Court should decline review. This statute effects a privilege, not a right, and has the laudable purpose of helping those with drug problems.

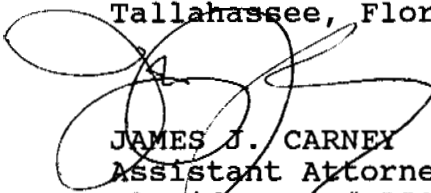
Moreover, the statute is clearly constitutional for **the** reasons expressed in detail in State v. Lite, 592 **So.2d** 1202 (**Fla. 4th DCA 1992**) (copy attached). **This** is not a complex issue.

CONCLUSION

Based on the preceding argument and authorities, this Court should decline jurisdiction.

Respectfully submitted,

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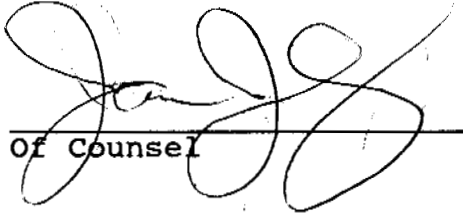


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I certify that a true copy of this document has been furnished by courier to Robert Friedman, 9th Floor, Governmental Center, 301 N. Olive Ave., W. Palm Beach, FL 33401, this 15 day of April 1992.



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IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,636

TERRY LITE,

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APPENDIX

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cretion in fixing terms of pretrial release of a juvenile who is involuntarily transferred than one who is indicted. Florida Rule of Criminal Procedure 3.131(b)(1)(iv) authorizes pretrial release by "placing the defendant in custody of a designated person or organization agreeing to supervise him." Where, as here, a trial court has heard uncontradicted evidence that placement in a juvenile facility is appropriate, we find no legal obstacle to the trial court making that the condition of pretrial release in these circumstances. Accordingly, the petition for writ of certiorari is

DENIED.

ERVIN and BARFIELD, JJ., concur.

BOOTH, J., dissents.



STATE of Florida, Appellant,

v.

Terry LITE, Appellee.

No. 914271.

District Court of Appeal of Florida,
Fourth District.

Jan. 22, 1992.

Rehearing and Certification

Denied Feb. 28, 1992.

Defendant pled guilty to possession of cocaine. During sentencing, the Circuit Court, Broward County, Richard D. Eade, J., determined that statutory requirement that defendant's driver's license be revoked was unconstitutional, and State appealed.

The District Court of Appeal held that statutory revocation requirement did not violate principles of due process or equal protection.

Reversed and remanded.

1. Constitutional Law ⇨287.3

Right to drive is not fundamental right and, therefore, test to be applied to determine if there is any violation of due process in statutory requirement that driver's license of one convicted of various drug offenses be suspended is whether statute bears reasonable relationship to permissible legislative objective and is not discriminatory, arbitrary, or oppressive. West's F.S.A. § 322.055(1); West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const. Amend. 14.

2. Automobiles ⇨132

Constitutional Law ⇨287.3

Statutory requirement that driver's license of one convicted of various drug offenses be revoked does not violate due process, though no relationship is required between vehicle and offense; statute bears rational relationship to permissible legislative objective of combatting substance abuse and crime. West's F.S.A. § 322.055(1); West's F.S.A. Const. Art. 1, § 9; U.S.C.A. Const. Amend. 14.

3. Constitutional Law ⇨230.5

Since there was no fundamental right to drive and statutory requirement that driver's license of one convicted of various drug offenses be revoked is not direct toward suspect class, equal protection challenge had to be analyzed under rational basis standard; to meet rational basis standard it had to be conceivable that statutory classification complained of bore some rational relationship to legitimate state purpose. West's F.S.A. § 322.055(1); West's F.S.A. Const. Art. 1, § 2; U.S.C.A. Const. Amend. 14.

4. Constitutional Law ⇨48(6)

Legislature has wide discretion in creating statutory classifications, and there is

Court of Appeal held that statutory requirement did not violate due process or equal protection and remanded.

Constitutional Law ⇨287.3

Right to drive is not fundamental right. The test to be applied to determine if any violation of due process requirement that driver's license be revoked is whether statute bears a reasonable relationship to permissible legislative objective and is not discriminatory, or oppressive. West's F.S.A. Const. Art. I, § 9; U.S.C.A. Const. Amend. 14.

Cases ⇨132

Constitutional Law —287.3

Statutory requirement that driver's license be revoked of various drug offenders does not violate due process. Reasonable relationship is required between statute and offense; statute bears relationship to permissible legislative objective of combatting substance abuse crime. West's F.S.A. § 322.055(1); West's F.S.A. Const. Art. I, § 9; U.S.C.A. Const. Amend. 14.

Constitutional Law ⇨230.5

There was no fundamental right violated by statutory requirement that license of one convicted of various offenses be revoked is not direct contact class, equal protection challenge to be analyzed under rational basis standard; to meet rational basis standard it is conceivable that statutory requirement complained of bore some relationship to legitimate state purpose. West's F.S.A. § 322.055(1); West's F.S.A. Const. Art. I, § 2; U.S.C.A. Const. Amend. 14.

Constitutional Law ⇨48(6)

Statute has wide discretion in creating classification, and there is

Cite as 592 So.2d 1202 (Fla.App. 4 Dist. 1992)

presumption in favor of validity, in determining whether classifications violate equal protection. West's F.S.A. Const. Art. 1, § 2; U.S.C.A. Const. Amend. 14.

5. Constitutional Law ⇨211(2)

Equal protection is not violated where permissible classification includes one, but not others who might have been included in broader classifications, so long as those within legally formed class are accorded equal treatment under law creating classification. West's F.S.A. Const. Art. 1, § 2; U.S.C.A. Const. Amend. 14.

6. Automobiles ⇨132

Constitutional Law ⇨230.5

Statutory requirement that driver's license of one convicted of possession, sale, or trafficking of controlled substances be revoked does not violate equal protection principles by its failure to apply to all drug offenders. West's F.S.A. § 322.055(1); West's F.S.A. Const. Art. 1, § 2; U.S.C.A. Const. Amend. 14.

Robert A. Butterworth, Atty. Gen., Tallahassee, and James J. Carney, Asst. Atty. Gen., West Palm Beach, for appellant.

Richard L. Jorandby, Public Defender, and Robert Friedman, Asst. Public Defender, West Palm Beach, for appellee.

PER CURIAM.

Appellee, Terry Lite pled guilty to possession of cocaine in violation of section 893.03(2)(a)4, Florida Statutes (1990). Pursuant to section 322.055(1), Florida Statutes (Supp.1990), appellee's license was required to be suspended for two years. During appellee's sentencing, the trial court refused to enforce section 322.055(1), finding it unconstitutional as violative of both substantive due process and equal protection under the Florida and Federal Constitutions. The court reasoned that the statute did not require the showing of a relationship between the statute's enumerated of-

fenses and the use of a motor vehicle, and further, not all drug offenders were subject to the statute's license revocation sanction. See Art. I, §§ 2, 9 Fla. Const.

This court recently reversed a trial court's similar refusal to apply section 322.055(1) in State v. Lawton, 588 So.2d 72 (Fla. 4th DCA 1991). We take this opportunity to explicitly state that which is implicit in the result reached in Lawton. In so doing, we reaffirm our decision that section 322.055(1) is constitutional, and therefore reverse and remand for the trial court to enforce the provisions of the statute.

Section 322.055(1), provides in pertinent part:

upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver's license or driving privilege of the person. The period of such revocation shall be 2 years or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such license.

[1, 2] Because the right to drive is not a fundamental right, the test to be applied to determine if the statute violates due process is whether the statute bears a reasonable relationship to a permissible legislative objective and is not discriminatory, arbitrary, or oppressive. See Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974); Potts v. State, 526 So.2d 104 (Fla. 4th DCA 1987), approved, 626 So.2d 63 (Fla.1988), cert. denied 488 US. 870, 109 S.Ct. 178, 102 L.Ed.2d 147 (1988). Here,

the permissible legislative objective is to combat substance abuse and crime. See generally Ch. 87-243, Laws of Fla. Accordingly, the means employed—revoking drivers' licenses of those convicted of possession, sale, or trafficking in a controlled substance—is rationally related to that goal because such punishment will deter the incidence of illicit drug possession, sales, and trafficking, curtail the transportation of illegal drugs, and reduce the mobility of those involved in drugs. The fact that no relationship is required between a vehicle and the listed offenses does not render the statute constitutionally infirm since the requisite rational relationship exists between revoking the drivers' license and the legislative goal of combatting crime and substance abuse. See *Potts v. State*. As stated in *State v. Yu*, 400 So.2d 762, 765 (Fla.1981), appeal dismissed, sub nom. *Wall v. Florida*, 454 U.S. 1134, 102 S.Ct. 988, 71 L.Ed.2d 286 (1982), the "legislature has broad discretion in determining necessary measures for the protection of the public health, safety and welfare, and we may not substitute our judgment for that of the legislature as to the wisdom or policy of the legislative act." Finally, the statute's two year period of license revocation is not unduly oppressive. Section 322.055(1) reads that the revocation period "shall be 2 years or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services." Furthermore, the court in its discretion may direct the Department of Motor Vehicles to issue a license for driving privileges restricted to business or employment purposes only. *Id.*

[3-6] Equally without merit is the argument that the statute violates equal protection principles because it does not treat all drug offenders similarly. Pursuant to section 322.055(1), only those convicted of possession, sale or trafficking of controlled substances must have their licenses re-

voked. Once again, since there is no fundamental right to drive and the statute is not directed toward a suspect class, section 322.055 must be analyzed under a rational basis standard. See *Florida High School Activities Ass'n v. Thomas*, 434 So.2d 306, 308 (Fla.1983); *Wells v. Malloy*, 402 F.Supp. 856, 858 (D.Vt.1975), affirmed, 538 F.2d 317 (2d Cir.1976). To meet the rational basis standard it must be conceivable that the statutory classification complained of bears some rational relationship to a legitimate state purpose. See *Id.*; see also *Gluesenkamp v. State*, 391 So.2d 192, 200 (Fla.1980), cert. denied, 454 U.S. 818, 102 S.Ct. 98, 70 L.Ed.2d 88 (1981). Additionally, the legislature has wide discretion in creating statutory classifications, and there is a presumption in favor of validity. See *State v. Leicht*, 402 So.2d 1153, 1154 (Fla. 1981), cert. denied 455 U.S. 989, 102 S.Ct. 1611, 71 L.Ed.2d 848 (1982). Moreover, equal protection is not violated where a permissible classification includes one, but not others who might have been included in the broader classifications, as long as those within the legally formed class are accorded equal treatment under the law creating the classification. See *State v. White*, 194 So.2d 601, 603 (Fla.1967); *Loxahatchee River Envtl. Control Dist. v. School Board*, 496 So.2d 930, 938 (Fla. 4th DCA 1986), approved, 515 So.2d 217 (1987) (statutorily created classification need not be perfect, nor must legislature, in interest of equal protection, either solve all facets of a problem at once or leave problem wholly unresolved).

Applying these principles to the instant case, section 322.055(1) does not violate equal protection even though it does not encompass all drug offenders. Consequently, we reaffirm our view that section 322.055(1) is constitutional and reverse and remand for the trial court to enforce the statute.

WARNER, POLEN and GARRETT, JJ.,
concur.



CERTIFICATE OF SERVICE

I certify that a true copy of this document has been furnished by courier to Robert Friedman, 9th Floor, Governmental Center, 301 N. Olive Ave., W. Palm Beach, FL 33401, this 15 day of April, 1992.



Of Counsel