

ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

On August 26, 1999, the state attorney for the Twelfth Judicial Circuit in and for Manatee County, Florida, filed an information against the Petitioner, Nicole Stoletz, charging her with one count of driving under the influence causing death, two counts of driving under the influence causing serious bodily injury, and one count of driving while license suspended as a habitual traffic offender. A jury trial on the first three offenses was held on March 22-28, 2001. Prior to the start of the trial, Ms. Stoletz pled no contest to count four: driving while license suspended as a habitual offender, a violation of section 322.34(5), Florida Statutes (1999), and section 322.264, Florida Statutes (1999). This offense was a third-degree felony.

The jury found Ms. Stoletz guilty on all three counts of the lesser-included misdemeanor offense of driving under the influence, a violation of section 316.193, Florida Statutes (1999).

A sentencing hearing was held on May 3, 2001. The lower court dismissed counts two and three since the law allowed only one driving under the influence (DUI) conviction for a single driving episode. The court sentenced Ms. Stoletz to five years in prison for count four and imposed a consecutive term of 12 months probation for count one. Pursuant to section 316.655, Florida Statutes (1999), the court suspended Ms. Stoletz' driver's license for life over the objection of the defense.

Ms. Stoletz filed a timely notice of appeal on May 22, 2001. On March 19, 2002, the Appellant filed a Motion to Correct Sentence in the lower court. Ms. Stoletz argued that the lifetime revocation of her driving privileges pursuant to section 316.655, Florida Statutes (1999), was erroneous because section 322.28, Florida Statutes (1999), only allowed a revocation of "not less than five years" for a second conviction for section 316.193. As Ms. Stoletz had but one prior DUI conviction, her license could only have been revoked for five years. In support of its argument, the defense cited to Whipple v. State, 789 So. 2d 1132 (Fla. 4th DCA 2001). The Whipple court held that in cases involving revocations of driving privileges stemming from a DUI conviction, section 322.28, the more specific statute, rather than section 316.655, "a permissive catch-all statute", controls. Id. at 1136. The lower court denied the Motion to Correct Sentence on May 9, 2002.

On January 17, 2003, the Second District affirmed the lifetime revocation of Ms. Stoletz' driver's license. See Stoletz v. State, 28 Fla. L. Weekly 234 (Fla. 2d DCA January 17, 2003). The court refused to follow Whipple and certified conflict.

SUMMARY OF THE ARGUMENT

The Second District erroneously affirmed the lower court's order revoking the Petitioner's driver's license for life. The license could only be revoked for five years under the applicable statutory scheme.

ARGUMENT

ISSUE

THE TRIAL COURT ERRED IN REVOKING THE
APPELLANT'S DRIVER'S LICENSE FOR
LIFE.

The Second District Court of appeal improperly affirmed the lower court's order revoking Ms. Stoletz' driving privileges pursuant to section 316.655, Florida Statutes (1999). The lower court should have been bound by section 322.28(2)(a)2, Florida Statutes (1999), which only allowed a revocation of five years in prison for a second DUI conviction under section 316.193. As Ms. Stoletz had but one prior DUI conviction, the lower court could only have revoked her license for five years.

In Stoletz v. State, 28 Fla. L. Weekly D234 (Fla. 2d DCA January 17, 2003), the Second District certified conflict with Whipple v. State, 789 So. 2d 1132 (Fla. 4th DCA 2001). In Whipple, the defendant Whipple was convicted of DUI involving serious bodily injury and his license was revoked for life under section 316.655. The Fourth District stated the following:

The language of section 322.28 is facially clear and unambiguous. The statute specifically mandates the suspension of driving privileges for violations of section 316.193. Unlike section 322.28, section 316.655, a permissive catch-all statute, does not address periods of suspension or revocation of driving privileges stemming from a DUI conviction under section 316.193. Rather, section 316.655, provides generally for the revocation or suspension of driving privileges based on the totality of the circumstances and the violation of any offense prohibited by chapter 316 or any

law of this state. Thus, section 322.28, the more specific statute, controls in this instance.

Id. at 1136.

The Second District held there was no conflict between the two statutes. Stoletz, 28 Fla. L. Weekly at D234. However, the rules of statutory construction mandate that only section 322.28 can apply. Section 322.28 applies to DUI offenses. Section 316.655, a permissive catch-all statute, applies to any offense prohibited by chapter 316 or any Florida law regulating motor vehicles. As the more specific statute, one applicable to a defendant convicted of DUI under section 316.193, section 322.28 should have been applied in the present case. A well-settled rule of statutory construction states that a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms. See McKendry v. State, 641 So. 2d 45, 46 (Fla. 1994); Adams v. Culver, 111 So. 2d 665, 667 (Fla. 1959). The Whipple court properly applied this rule.

The Second District held that because section 322.28(2)(a)2 mandates a sentence of "not less than 5 years" for a second DUI conviction, it was not inconsistent with section 316.193 since nothing in the former statute prohibits a revocation longer than five years. Whipple holds the opposite and in support of its holding that court cited to Jackson v. State, 634 So. 2d 1103 (Fla. 4th DCA 1994). In Jackson, the Fourth District affirmed a defendant's DUI convictions, but reversed the permanent revocation of his driver's license under section 322.28(2)(e), Florida Statutes (1991), on the grounds

that the statute contemplated convictions arising out of separate driving episodes, not multiple convictions arising out of one driving episode. Jackson applied the basic tenet of statutory construction that "statutory provisions are to be read within the context of the entire statute." Id. at 1106. In analyzing section 322.28, the court held:

A reading of the fourth conviction provision in context with the second and third conviction provisions of this statute leads us to conclude that the overall scheme is for increased terms of suspension based on the number of times the defendant drives under the influence, not based on the happenstance consequences of one episode of driving under the influence. The statute increases the length of suspension each time the offender repeats the offending conduct, and when the offender does it the fourth time, his driving privileges are permanently revoked.

Id.

Applying Jackson, the Whipple case held that the legislature did not contemplate the permanent revocation of a driver's license without the requisite number of DUI convictions. Id. at 1137. The increased length of suspension or revocation is to be commensurate with the number of DUI's. Thus, under the second conviction provision, the Fourth District held that the lower court erred in imposing a permanent license revocation.

Despite the "not less than 5 years" language in 322.28(2)(a)2, both Jackson and Whipple hold that a court cannot permanently revoke a driver's license for only two DUI convictions. The Fourth District properly read that statutory provision within the context of the entire statute. Section 322.28 increases the term of revocation

based on the number of times a defendant is convicted of DUI. The statute's context indicates "the legislature did not contemplate the permanent revocation of a driver's license without the requisite number of DUI convictions." Whipple, 789 So. 2d at 1137. In Stoletz, the Second District failed to read section 322.28(2)(a)2 within the context of the entire statute. The Fourth District did and therefore, this Court should follow the holding in Whipple and overturn the Second District's holding in Stoletz. Ms. Stoletz' lifetime suspension can be reversed.

CONCLUSION

In light of the foregoing reasons, arguments, and authorities, the Respondent respectfully asks this Honorable Court to reverse the opinion of the Second District Court of Appeal in Stoletz v. State, 28 Fla. L. Weekly D234 (Fla. 2d DCA Jan 17, 2003).

APPENDIX

PAGE NO.

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APPENDIX

PAGE NO.

1. Second District Court of Appeal Opinion A1-5
filed January 17, 2003

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Richard Michael Fishkin, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 801-0600, on this _____ day of February, 2003.

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