SUPREME COURT OF FLORIDA

DEMELLO BOLWARE,

Petitioner,

vs.

CASE NO.: SC04-12
LOWER CASE NO.: 1D02-4016

STATE OF FLORIDA,

Respondent.

-

INITIAL BRIEF OF PETITIONER

ON APPEAL FROM

FIRST DISTRICT COURT OF APPEAL

Jeffrey P. Whitton
Florida Bar No.: 0329509
Post Office Box 1956
Panama City, Florida 32402
(850) 769-7040
Attorney for Petitioner

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Case and of the Facts 1

Summary of Argument 4

Argument

Issue I 6

THE DISTRICT COURT EXCEEDED ITS CERTIORARI JURISDICTION IN THIS CASE.

Issue II 9

WHETHER A NOLO PLEA TO A TRAFFIC OFFENSE THAT RESULTS IN A FIVE YEAR LICENSE SUSPENSION PURSUANT TO SECTION 322.27(5) IS VOLUNTARY UNLESS THE DEFENDANT HAS BEEN ADVISED OF THE AUTOMATIC SUSPENSION.

Conclusion 21

Certificate of Service 22

TABLE OF AUTHORITIES

CASES:
PAGES

Akbar v. State
570 So.2d 1047 (Fla. 1st DCA 1990) 16

Allstate Ins. Co. V. Kaklamanos
843 So.2d 885 (Fla. 2003) 3,6

Ashley v. State
614 So.2d 486 (Fla. 1993) 10,11

Boutwell v. State
776 So.2d 1014 (Fla. 5th DCA 2001) 7

Cuthrell v. Director, Patuxent Institution
475 F.2d 1364, 1366 (4th Cir.) cert.denied,
414 U.S. 1005, 94 S.Ct. 362, 38 L.Ed.2d 241 (1973) 10

Daniels v. State
716 So.2d 827 (Fla. 4th DCA 1998) 3,6,7,8,9,11,12,13,14,15,17,21

Fox v. State
668 So.2d 602 (Fla. 1996) 10

Gideon v. Wainwright
372 U.S. 335 (1963) 16

Hernandez-Molina v. State
860 So.2d 483 (Fla. 4th DCA 2003) 16

Howard v. State
7
762 So.2d 995 (Fla. 3d DCA 2000)

Ivey v. Allstate Ins. Co.
6
774 So.2d 679 (Fla. 2000)

Loeb v. State
17
387 So.2d 433, 436 (Fla. 3d DCA 1980)

Major v. State
4,5,7,8,9,13,15,17,18,19
814 So.2d 424 (Fla. 2002)

Moore v. State
7
831 So.2d 1237 (Fla. 1st DCA 2002)

CASES:
PAGES

Nettles v. State
15
850 So.2d 487, 493 (Fla. 2003)

Nordelus v. State
13,14,21
889 So.2d 910 (Fla. 4th DCA 2004)

Prianti v. State
2,3,6,8,12,14,21
819 So.2d 231 (Fla. 4th DCA 2002)

Smith v. City of Gainesville
4,6,7,14,15,16,17,18
93 So.2d 105 (Fla. 1957)

State v. Fox
10
659 So.2d 1324 (Fla. 3d DCA 1995)

State v. Ginebra
10
511 So.2d 960 (Fla. 1987)

Stoletz v. State
11
875 So.2d 572 (Fla. 2004)

Sullens v. State
13,14,21
889 So.2d 912 (Fla. 5th DCA 2004)

Vichich v. Department of Highway Safety and Motor Vehicles
17
799 So.2d 1069 (Fla. 2d DCA 2001)

Watrous v. State
7,9
793 So.2d 6 (Fla. 2d DCA 2001)

Whipple v. State
11,12,14,21
789 So.2d 1132 (Fla. 4th DCA 2001)

Zambuto v. State
10
413 So.2d 461(Fla. 4th DCA 1982)

STATUTES:

§ 322 Fla. Stat. (2005)
4

§ 322.055 Fla. Stat. (2005)
10

§ 322.055(1) Fla. Stat. (2005)
11

§ 322.2615 Fla. Stat. (2005)
19

§ 322.27(5) Fla. Stat. (2005)
9,19

OTHER AUTHORITY:

	PAGES
Fla.R.Crim.P. 3.170(k)	10
Fla.R.Crim.P. 3.170(l)	11
Fla.R.Crim.P. 3.172(c)(1)	10,11
Fla.R.Crim.P. 3.850	1,3,12

STATEMENT OF THE CASE AND OF THE FACTS

The record on appeal is difficult to cite to in that the case was presented to the District Court on a petition for certiorari, and therefore no record was filed in the District Court of Appeal. The record before the Circuit Court was appended to Bolware's response to the writ and will be cited as "R". The Circuit Court's opinion was also appended and will be referred to by name. The District Court's opinion will be referred to as "slip opinion".

On December 15, 2000, the Defendant, Demello Bolware, was charged with driving while license suspended or revoked. (R 1) A public defender was appointed. (R 2) On February 13, 2001, Bolware entered a plea of no contest, was adjudicated guilty, and sentenced accordingly. (R 3-4)

Bolware failed to comply with the terms of the probation, and was ultimately arrested and required to serve a brief sentence. (R 10-11)

On November 20, 2001, the Defendant filed a motion for post-conviction relief pursuant to Rule of Criminal Procedure 3.850, supported by the Defendant's affidavit (R 12-15), which came on for hearing on December 18, 2001. (R 22, 43-63) Following an evidentiary hearing, the court denied the

Defendant's motion (R 23) and an appeal to Circuit Court followed. The undersigned was appointed by the County Court to represent Bolware on appeal.

The Defendant asserted that he was entitled to withdraw his plea, and the judgment and sentence entered thereon, due to the fact that he had not been advised by counsel that he would face a five year suspension of his driving privileges upon conviction as a habitual traffic offender. (R 12-15, 45-47) Bolware was the only witness at the evidentiary proceeding, and his testimony that he had never discussed the possibility of a five year license suspension with Tyrone May, his assistant public defender, was unrefuted. (R 45-49)

The trial court found that the habitual offender suspension by the Department of Highway Safety and Motor Vehicles was not a direct consequence of the plea, and denied relief. (R 23)

Following complete briefing and oral argument, the Circuit Court reversed, holding:

> The issue on appeal is simply whether a statutory mandated administrative act - the suspension or revocation of a driver's license - is a direct (or indirect) result of a plea to a specified driving offense requiring defense counsel to warn a defendant prior to the entry of that plea. The Appellate Court for this District has apparently not yet ruled on this question, but counsel for Appellant urges the Court to follow Prianti v. State, [819 So.2d 231] (Fla. App. 4 Dist.) holding that a mandatory revocation of a driver license based on a D.U.I. plea is a direct

consequence of that plea.

> While counsel have cited a number of cases supporting their respective positions, this Court is inclined to apply common concepts to the relevant terms. "Direct" means immediate or proximate - not remote. "Result" means consequence. Syllogistically: if you do "A" then "B" must follow
>
> If an agency is required to take an action (B) when a person enters a plea in court (A) then the administrative act is a direct consequence of that plea, and the failure to so advise renders counsel ineffective for the purpose of Rule 3.850, Florida Rules of Criminal Procedure.

The state then sought certiorari review in the First District Court of Appeal.

In a fractured opinion a three judge panel, with one dissent, granted certiorari and reinstated the County Court's order (slip opinion). The First District denied en banc review.

Discretionary review was sought in this court based upon the express conflict with the Fourth District's decisions in Daniels v. State, 716 So.2d 827 (Fla. 4th DCA 1998) and Prianti v. State, 819 So.2d 231 (Fla. 4th DCA 2002) as to the merits and with Allstate Ins. Co. V. Kaklamanos, 843 So.2d 885 (Fla. 2003) as to certiorari jurisdiction. This court accepted jurisdiction, without specifying the issue in which it found conflict.

SUMMARY OF ARGUMENT

Under several sections of Chapter 322, Florida Statutes, administrative or judicial suspensions of driving privileges are mandatory upon conviction of certain traffic offenses. Common sense tells us that often the harshest consequence of a plea to a traffic offense is the automatic license suspension. It certainly looks and feels like punishment to the offender. It is absolutely directly and automatically a consequence of the plea. This court has, in Major v. State, 814 So.2d 424 (Fla. 2002), held that a plea is not voluntarily made if the direct, immediate and largely automatic consequences affecting the range of punishment of the plea are not explained to the defendant. The question addressed in this case is whether an automatic five year license suspension is such a consequence.

The decision below relied on a 50 year old case, Smith v. City of Gainesville, 93 So.2d 105 (Fla. 1957) addressing jurisdictional and constitutional issues raised in a challenge to a drivers license suspension to find that this court had clearly established that a drivers license suspension was not punishment and thus not a "direct consequence affecting the range of punishment" of a plea, of which a traffic defendant must be advised. Since Smith had nothing to do with the direct

consequence test announced in Major the decision of the First District not only was error, it caused the District Court to exceed its jurisdiction in holding a line of Fourth District cases, followed by the Circuit Court sitting as an appellate court, to be a clear departure from the essential requirements of law.

In doing so the District Court not only erred on the merits by misapplying controlling precedent from this court, i.e. Major v. State, but exceeded the scope of the second tier appellate review of a Circuit Court sitting in its appellate capacity over a County Court.

ARGUMENT

ISSUE I

THE DISTRICT COURT EXCEEDED ITS CERTIORARI JURISDICTION IN THIS CASE.

This is an issue of law reviewable de novo.

In order to reverse a Circuit Court sitting in its appellate capacity over a County Court decision, the District Court of Appeal must find that the Circuit Court "departed from the essential requirements of law." This is more than "did the court err" or a "de novo" review. Instead the District Court must determine whether the Circuit Court violated a clearly established legal principle resulting in a miscarriage of justice. Ivey v. Allstate Ins. Co., 774 So.2d 679 (Fla. 2000), Kaklamanos.

As clearly noted in the opinion below the only law to guide the Circuit Judge was a line of cases from the Fourth District, most notably Daniels and Prianti. Whether or not this Court, or the First District, agrees with those cases, following them simply cannot be a departure from clearly established legal principles.

Contrary to the majority opinion below, previous opinions from this court do not hold that license suspension is not a direct consequence of a plea having an effect on the range of

punishment.

As argued more fully in Issue II, in Smith, a case which predates the right to any advice by counsel, the court was concerned with constitutional limitations on jurisdiction. Nothing remotely addresses the issue of "direct" versus "collateral" consequences of a plea. The opinion below found that Smith established a clear rule of law in a situation not remotely contemplated by the Smith court, and further found that a sister District Court of Appeal "fail[ed] to follow the law clearly established by the Florida Supreme Court" (slip opinion at 5 footnote 2). This holding was erroneous on its face.

Instead as noted by Judge Allen:

> The legal issue decided by the circuit court was whether revocation or suspension of a Florida driver's license resulting from a plea to a driving offense is a direct consequence of the plea. The only law directly addressing the question is case law from the Fourth District holding that revocation or suspension of a license in these circumstances is a direct consequence. The circuit court was compelled to follow this case law because, in the absence of inter-district conflict, district court decisions bind all Florida trial courts. This requirement applies even to circuit courts sitting in review of county court decisions. The circuit court's order in the present case was therefore entered in accordance with this absolute requirement.
>
> Although the circuit court had no discretion to decide this case other than it did, it likely drew considerable confidence in the ultimate correctness of its ruling from the fact that the leading case standing for the controlling legal proposition,

> Daniels v. State, 716 So.2d 827 (Fla. 4th DCA 1998), has been cited without criticism by every appellate court in Florida. See e.g., Major v. State, 814 So.2d 424 (Fla. 2002); Moore v. State, 831 So.2d 1237 (Fla. 1st DCA 2002); Watrous v. State, 793 So.2d 6 (Fla. 2d DCA 2001); Howard v. State, 762 So.2d 995 (Fla. 3d DCA 2000); Boutwell v. State, 776 So.2d 1014 (Fla. 5th DCA 2001). Indeed, the supreme court has favorably quoted from Daniels at considerable length, and has indicated that Daniels contains a correct recitation of the test to be applied in determining whether a consequence of a plea is direct or indirect. See Major v. State, 814 So.2d at 429, 431. [Some citations omitted]
> (Slip opinion pages 8-9, Allen dissenting)

For the majority to then decide that the Circuit Court departed from clearly established law was simply wrong. Whether this court ultimately agrees or not with Prianti, the District Court lacked jurisdiction to disagree in this case.

ISSUE II

WHETHER A NOLO PLEA TO A TRAFFIC OFFENSE THAT RESULTS IN A FIVE YEAR LICENSE SUSPENSION PURSUANT TO SECTION 322.27(5) IS VOLUNTARY UNLESS THE DEFENDANT HAS BEEN ADVISED OF THE AUTOMATIC SUSPENSION.

This is an issue of law reviewable de novo in this court.

First, it is well established that for a plea to be voluntarily entered it must be made with knowledge of the direct consequences of the plea. Direct consequences have been repeatedly defined by both the Florida Supreme Court and every District Court of Appeal of Florida as being those consequences that are "direct, immediate, and largely automatic" results of the plea. See, Watrous, Major.

Everyone agrees that this court approved a "direct consequences" test in Major. However, there is a conflict between the District Courts on the question of whether a mandatory driver's license revocation is a direct consequence of the plea, such that the trial court and defense counsel have an obligation to inform the defendant of the revocation before the plea. The dispute centers on the second phrase of the test reaffirmed in Major, "having an effect on the range of defendant's punishment."

In Daniels, the Fourth District was faced with a case in

which Daniels had entered a plea to possession of cocaine. At the time of the plea, there was no discussion of the impact on Daniels' driving privileges of this plea. When it became apparent that the Circuit Court was required pursuant to Section 322.055 to direct the Department of Highway Safety and Motor Vehicles to revoke Daniels' license, Daniels moved to withdraw his plea, which the trial court denied. The District Court noted that the license revocation was unquestionably a direct, immediate and automatic consequence of the plea, and constituted a penalty. The District Court directed that Daniels have an opportunity to withdraw his plea, stating:

> Florida Rule of Criminal Procedure 3.170(k) requires the trial court to determine that a defendant's plea is voluntary. One aspect of a voluntary plea is that the defendant understand the reasonable consequences of his plea, including "the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law." Fla.R.Crim.P. 3.172(c)(1); Ashley v. State, 614 So.2d 486 (Fla. 1993). However, a trial court is required to inform a defendant only of the direct consequences of the plea, and is under no duty to advise the defendant of any collateral consequences. See State v. Ginebra, 511 So.2d 960, 961 (Fla. 1987); State v. Fox, 659 So.2d 1324, 1327 (Fla. 3d DCA 1995), rev. den., Fox v. State, 668 So.2d 602 (Fla. 1996). In Zambuto v. State, 413 So.2d 461, 462 (Fla. 4th DCA 1982), this court adopted the fourth circuit's definition of a "direct consequence" of a plea:
>
> > "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions,

> turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1366 (4th Cir.) cert.denied, 414 U.S. 1005, 94 S.Ct. 362, 38 L.Ed.2d 241 (1973).

Daniels, 716 So.2d at 828. Applying this framework to the context of Daniels' license revocation, the Daniels court held that such a revocation is a direct consequence of the plea:

> In this case, the two year license revocation mandated by section 322.055(1) was definite, immediate, and automatic upon Daniels' conviction. The revocation was a "consequence" of the plea under Ashley and a "penalty" contemplated by Rule 3.172(c)(1). Daniels did not waive his right to raise the issue, having filed his motion to withdraw the plea within 30 days of the rendition of the sentence under Rule 3.170(l). The transcript of the sentencing hearing supports his claim that imposition of the suspension surprised him. The defendant was placed on probation, not sentenced to a lengthy term of imprisonment, so the effect of the license suspension upon him was not minimal. For these reasons, prior to accepting the plea, the trial court was required to determine that the defendant understood that he was subject to the section 322.055(1) suspension.

Daniels, 716 So.2d at 829.

The Daniels decision has been cited with approval by this Court, Major supra. In Whipple v. State, 789 So.2d 1132 (Fla. 4th DCA 2001), disapproved on other grounds, Stoletz v. State, 875 So.2d 572 (Fla. 2004), the District Court went a step further. Unlike Daniels, Whipple was informed that his license would be revoked

as a result of his plea. Whipple, 789 So.2d at 1134-1135, 1138. However, his attorney assured him that the maximum term of the revocation would be five or ten years. He was not warned that his license could be revoked permanently. Whipple at 1135, 1138. The trial court, in imposing sentence, revoked Whipple's license permanently. Whipple at 1134. Whipple appealed from the denial of his motion to withdraw plea. Relying on Daniels, the district court reversed.

Subsequently the Fourth District faced a case essentially identical to ours. At his plea to a DUI Michael Prianti was told

his driving privileges would be revoked for only one year. Prianti at 232. He subsequently learned that the Department had permanently revoked his license as a result of the plea. He sought Rule 3.850 relief, which was denied. Relying on Daniels and Whipple, the Fourth District reversed for an evidentiary hearing.

> For a plea to be voluntary, the defendant must be fully advised of the direct consequences of the plea. Daniels v. State, 716 So.2d 827 (Fla. 4th DCA 1998). We have held that a mandatory two year revocation of a driver's license under section 322.055(1) is a direct consequence. Whipple v. State, 789 So.2d 1132 (Fla. 4th DCA 2001); Daniels v. State, 716 So.2d at 828.

Prianti, 819 So.2d at 232.

In spite of this line of cases, Judge Barfield, writing for the majority in the case sub judice, and in a companion case Caswell v. State, (rev. pending SC04-14) held that an automatic revocation is not a criminal punishment, but rather an administrative remedy for public protection which automatically flows from the conviction. Having determined that the revocation was not a punishment, Judge Barfield concluded that it was not a direct consequence of the plea affecting the range of punishment and therefore counsel did not have to inform the defendant of the potential for revocation prior to the plea. Judge Ervin wrote a concurring opinion agreeing. He stated that he would certify conflict with Daniels and the other Fourth District cases. Judge Allen dissented, stating that the Circuit Court had correctly followed the Fourth District cases which were the only cases directly on point. He observed that this Court in Major had favorably quoted from Daniels at length and had determined that Daniels contained a correct recitation of the test to be applied in determining whether a consequence of the plea is direct or collateral. Judge Allen further noted that every appellate court in the state had cited Daniels without criticism.

Subsequently the Fourth District continued to adhere to its

position that mandatory license suspensions are definite, immediate, and largely automatic consequences having an effect on defendant's punishment.

In Nordelus v. State, 889 So.2d 910 (Fla. 4th DCA 2004), (rev. pending SC04-2408) the defendant pled to DUI manslaughter, but was not informed that his license would be revoked as a result of the conviction. Because the revocation was mandatory under the relevant statute, the court held that this was a direct consequence of the plea under Major. The court certified conflict with the case sub judice.

Finally, in Sullens v. State, 889 So.2d 912 (Fla. 5th DCA 2004) (rev. pending SC04-2388), the Fifth District aligned itself with the First District, affirming the denial of Petitioner's motion for post conviction relief on the authority of Bolware. The court acknowledged that Bolware was in conflict with Daniels. Accordingly, the Fifth District certified conflict with Daniels.

This Court should approve Daniels, Whipple, Prianti, and Nordelus. The decisions in Bolware and Caswell, and by extension Sullens, are largely based on Smith, in which this Court held that a mandatory license revocation following a DUI conviction was not a punishment. However, the issues considered

in Smith are quite different from the issues in this case. In Smith the defendant argued that the mandatory revocation provision was a bill of attainder, a double punishment, and a separation of powers violation. Thus, the court was able to uphold the provision on the theory that the revocation was not truly a punishment.

Despite its official pronouncement that the revocation was not a punishment, Smith acknowledged that the revocation served as a form of "retribution" for the offense of drunk driving:

> It would appear to us to be utterly absurd to hold that a man should be allowed to fill his automobile tank with gasoline and his personal tank with alcohol and weave his merry way over the public highways without fear of retribution should disaster ensue, as it so often does.

Smith, 93 So.2d at 106. Thus, it was at least implicitly acknowledged that there is a punitive aspect to a license revocation imposed as a result of a conviction.

Here, the question is whether the revocation is a direct consequence of the plea affecting punishment, a considerably different issue that was present in Smith. While the definition of a direct consequence includes the term "range of defendant's punishment," Major, 814 So.2d at 431, the focus in the direct consequence analysis is on ensuring that a criminal defendant enters into a plea agreement with an understanding of the

reasonable consequences. See Major, 814 So.2d at 429 (quoting Daniels, 716 So.2d at 828). The analysis in Smith is not relevant to this determination. Unlike the defendant in Smith, Petitioner is not challenging the authority of either the sentencing judge or the Department of Highway Safety and Motor Vehicles to impose a license suspension or revocation. That authority is well settled. What Petitioner seeks is notice that the plea will result in a revocation of a definite length.

It is doubtful that the Smith Court's discussion of punishment remains viable in Florida's modern sentencing scheme. Smith concluded that a mandatory license revocation was not a punishment but rather was merely an administrative remedy because 1) its primary purpose is to protect the public, and 2) the trial court had no discretion but to impose the revocation. Smith, 93 So.2d at 106-107. Regarding this first ground, protection of the public is a purpose of many criminal sentencing laws. See e.g. Nettles v. State, 850 So.2d 487, 493 (Fla. 2003)(one legislative purpose underlying prison releasee reoffender act as to protect public); Akbar v. State, 570 So.2d 1047 (Fla. 1st DCA 1990)(protection of the public is the underlying purpose of habitual offender sentencing statute); Hernandez-Molina v. State, 860 So.2d 483 (Fla. 4th DCA

2003)(upholding three strikes law against single subject challenge, because all provisions related to enhanced criminal punishments for the protection of the public).

Regarding the second ground (judge's lack of discretion), a lack of judicial discretion has unfortunately become a hallmark of Florida's sentencing law.

From the Prison Releasee Reoffender Act, to 10-20-Life, to three strikes, to the various minimum mandatory sentences for narcotics and weapons-related offenses, Florida sentencing law features numerous instances in which the sentencing judge's discretion has been largely, if not completely, eliminated. This does not mean that the sanctions the sentencing judge is required to impose are something other than a punishment. One would not argue, for instance, that a mandatory prison sentence imposed under the Prison Releasee Reoffender Act was not a punishment merely because the sentencing judge had no discretion in imposing it.

Finally, Smith predates Gideon v. Wainwright, 372 U.S. 335 (1963) by six years. The notion of the required quality of legal advice given a defendant could not have remotely entered into the Smith court's consideration.

Applying the Major definition, a license revocation is a

direct consequence of the plea. It is definite, immediate, and automatic. To suggest that it is not a direct consequence because there is case law from another context declaring revocation to be something other than a "punishment" is a semantic shell game. If this argument were taken to its logical extreme, then a term of probation would not be considered a direct consequence of the plea, because there is case law -- most of it, like Smith, from other contexts and arguably outdated – which holds that probation is not a sentence. See e.g. Loeb v. State, 387 So.2d 433, 436 (Fla. 3d DCA 1980).

In Vichich v. Department of Highway Safety and Motor Vehicles, 799 So.2d 1069 (Fla. 2d DCA 2001), the court discussed the confusion surrounding the proper vehicle for challenging a license suspension imposed by the Department. It is time to cast aside the "civil" label attached to a mandatory statutory license revocation and acknowledge that such a revocation, when imposed as a result of a criminal conviction, is a criminal punishment which is part of the defendant's sentence.

This is not a de minimus penalty. See Daniels, 716 So.2d at 829 (effect of license suspension was not minimal, where defendant was sentenced to probation rather than a lengthy term of incarceration). Surely, common experience has shown that for

most people, the ability to drive is absolutely essential, whether it be for work or family purposes. This is especially true in a large, geographically diverse State, such as Florida. For most people, losing the privilege to drive for a significant period of time will have serious adverse consequences, potentially costing them their jobs and burdening their families. A defendant must have notice of this consequence if the plea is to be considered knowing and voluntary.

In light of this court's opinion in Major, the First District's reliance on Smith is misplaced. Now that Major has given us a definitive definition of a direct consequence, it makes no sense for Florida courts to blindly follow a fifty-year-old opinion that was decided in a different context. This issue is controlled by Major, not Smith. Major adopted a "less restrictive definition of direct consequences[.]" Major, 814 So.2d at 431 ("The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.") As noted above, a license revocation imposed by the trial court as a result of a conviction has a direct, immediate, and largely automatic effect on the

defendant’s range of punishment, making it a direct consequence of the plea under Major.

In evaluating whether a license revocation is a direct consequence of the plea for our purposes, it is interesting to compare one type of license deprivations which are imposed on DUI defendants under the Florida statutory scheme with Bolware’s suspension. A 322.2615 license suspension is purely administrative. It is independent of any criminal prosecution. The suspension takes effect upon arrest. The resolution of the criminal case is irrelevant to the suspension, except under one circumstance. Review is by administrative hearing before the Department of Highway Safety and Motor Vehicles, where the burden of proof is merely a preponderance of the evidence.

In contrast, a revocation under Section 322.27(5) as was imposed on petitioner, is an inextricable part of the criminal prosecution. It is triggered by a conviction.

This court should avoid the semantic distinctions between ‘punishment’ and ‘protection’ and follow the common sense approach it adopted in Major, a direct, immediate, and largely automatic increase in the defendant’s punishment is the sort of thing the defendant should be advised of during plea negotiations. It defies common sense, and separates law from

common understanding to tell a defendant that loss of his driving privileges imposed upon conviction is not punishment. The loss of driving privileges is indeed punishment, often the primary punishment for many traffic offenses. When possible we should utilize common meanings in our laws, and the common understanding of the word “punishment” includes a five year loss of driving privileges. The District Court’s conclusion otherwise was error and should be reversed.

CONCLUSION

This court should quash the decision below, approve Daniels, Prianti, Whipple, and Nordelus, and disapprove Caswell and Sullens.

Respectfully submitted,

____

Jeffrey P. Whitton
Florida Bar No.: 329509
Post Office Box 1956
Panama City, Florida 32402
(850) 769-7040
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief of Petitioner has been furnished to Dennis Beesting, Assistant State Attorney, Post Office Box 1040, Panama City, FL 32402, and Mr. Robert R. Wheeler and Mr. Edward C. Hill, Jr., Office of the Attorney General, The Capitol PL-01, Tallahassee, FL 32399-1050, by U.S. Mail, this 7th day of April, 2006.

Jeffrey P. Whitton
Florida Bar No.: 329509
Post Office Box 1956
Panama City, Florida 32402
(850) 769-7040
Attorney for Petitioner

CERTIFICATE OF TYPEFACE COMPLIANCE

I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

Jeffrey P. Whitton

A P P E N D I X

Opinion below filed October 31, 2003