

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

ALBERTOINE NORDELUS,

Appellee.

Case No. SC04-2408

ON APPEAL FROM
THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

The State will rely upon the Statement of Case and Facts in its initial brief.

SUMMARY OF THE ARGUMENT

POINT I. The decision of the lower court finding that a mandatory

Revocation of a defendant's driver's license following a conviction

For DUI manslaughter is a direct consequence of a plea is erroneous

And contrary to this court's long-standing precedent.

Revocation of a driver's license under Chapter 322 following a conviction for

certain enumerated offenses is not regarded as punishment.

Rather,

Such revocation is an administrative remedy for the protection of

the public.

Point II. The decision of the Fourth District Court of Appeal

that the record does not conclusively refute Nordelus' claim

that his plea is involuntary because his attorney misadvised him

regarding the nature and length of his sentence is erroneous.

Contrary to this finding, the record amply refutes any claim

that Nordelus was misadvised regarding the nature and length of

his sentence.

ARGUMENT

POINT I

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL THAT THE MANDATORY AND PERMANENT REVOCATION OF A DEFENDANT'S DRIVERS LICENSE PURSUANT TO SECTION 322.28(2)(e), Fla. STAT. (2000) IS A DIRECT (VERSUS COLLATERAL) CONSEQUENCE, THUS RENDERING A PLEA INVOLUNTARY WHERE PRIOR to entering THERETO, A DEFENDANT IS NOT ADVISED OF THE REVOCATION?

The lower court found that the mandatory and permanent revocation of a defendant's drivers license pursuant to § 322.28(2)(e), Fla. Stat. (2000) is a direct (versus collateral) consequence, as that term is defined by this Court in Major v. State, 814 So.2d 424 (Fla. 2002). Nordelus v. State, 889 So.2d 910 (Fla. 4th DCA 2004). As a result, the Fourth District Court of Appeal held that a defendant's plea is involuntary where prior to entering same, that defendant is not advised of the

revocation. Id. The State respectfully submits this is erroneous and in contravention to this Court's long standing precedent that mandatory revocation of the driver's license under Chapter 322 following conviction for certain crimes is not relevant to punishment. Rather, such revocation is purely an administrative remedy for the protection of the public. Thus, a defendant need not be advised of such a revocation prior to entering a plea.

Appellee apparently argues that the statute at issue here, § 322.28(2)(e) makes revocation of a person's drivers license a "judicial function," whereas the statute cited in Smith v. City of Gainesville, 93 So.2d 105 (Fla.1957) makes the revocation an "administrative function." This distinction, he claims, makes the revocation of a person's driver's license under § 322.28(2)(e) a direct consequence of the plea because it is one the court can impose (AB 6-7).

The State disagrees and submits this is a distinction without a difference. That § 322.28(2)(e) was changed to state that the "court" (vs. the "department") shall forthwith revoke the license does not render the rationale in Smith any less applicable. Regardless of the highlighted change to the statute, the result still is that revocation of a person's driver's license following a conviction for violating § 316.193

does not amount to a punishment. Rather, it is 'an administrative remedy for the public protection that mandatorily follows...'" State v. Caswell, 28 Fla. L. Weekly D2492 (1st DCA October 31, 2003); State v. Bolware, 28 Fla. L. Weekly D2493 (1st DCA October 31, 2003)(c.o.).

Appellee's argument ignores the other text of § 322.28(2)(e) which states, "If the court has not permanently revoked such driver's license or driving privilege within 30 days after imposing sentence, the *department* shall permanently revoke the driver's license or driver's privilege pursuant to this paragraph...." The State submits this language clearly shows that revocation pursuant to this section is, and always has been an administrative function and that the court's role here is merely ministerial. This is true since the statute directs the Department to revoke the license in the event the court fails to do so within 30 days of sentencing.¹ For this as well as the

¹ One need only look to a similar statute under Chapter 322 to see that the trial court's role here is purely ministerial. Florida law requires a trial court to direct the Department to revoke the license of any juvenile found guilty of an offense under chapter 893. § 322.056(1), Fla. Stat. The language in section 322.056(1), like the section at issue here, is mandatory, and thus the trial court does not have any discretion regarding the matter. See, State v. R.N., 597 So. 2d 862, 863 (Fla. 5th DCA 1992) and State v. J.V.W., 739 So. 2d 173 (Fla. 2d

reasons argued in the State's initial brief, it is respectfully submitted the Fourth District Court of Appeal erred in holding that the revocation of a person's driver's license following a conviction for violating § 316.193, pursuant to § 322.28(2)(e), Fla. Stat. is a direct consequence of a plea. Accordingly, that decision should be quashed.

POINT II

WHETHER THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY FOUND THAT THE RECORD ATTACHMENTS DO NOT REFUTE NORDELUS' CLAIM THAT HIS PLEA WAS INVOLUNTARY BECAUSE HE WAS MISADVISED REGARDING THE LENGTH AND NATURE OF HIS SENTENCE?

DCA 1999)("The requirements of section 322.056(1) are mandatory, even when a no contest plea has been entered and adjudication has been withheld"); State v. M.D., 706 So. 2d 41 (Fla. 2d DCA 1998)(failure to suspend juvenile's driver's license constituted a departure from the essential requirements of law); State v. M.A.P., 708 So. 2d 322 (Fla. 2d DCA 1998)(trial court's refusal to suspend juvenile's driver's license was reversed because "[t]he language in section 322.056 leaves no discretion to the trial court."); State v. M.L.R., 722 So. 2d 259 (Fla. 2d DCA 1998)(reversing trial court's failure to suspend a juvenile's driver's license for two years pursuant to the dictates of section 322.056); State v. P.J.A., 723 So. 2d 389 (Fla. 2d DCA 1999)(same); State v. R.P.E., 779 So. 2d 426 (Fla. 2d DCA 2000)("The requirements of section 322.056(1) are mandatory, even when a no contest plea has been entered and adjudication has been withheld."); State v. C.C.S., 779 So. 2d 465 (Fla. 2d DCA 2000)("This court has held that even when the trial court accepts a no contest plea and withholds adjudication, section 322.056(1) mandates that the trial court suspend the juvenile's driver's license."); State v. N.P., 913 So.2d 1 (Fla. 2d DCA 2005)(trial court erred when it failed to imposed a driver's license suspension as required by section 806.13(7) of the Florida Statutes).

Petitioner rests on its argument contained in its initial brief on the merits.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, the State of Florida respectfully requests this Honorable Court to QUASH the lower court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Initial Brief on the Merits" has been furnished by U.S. Mail to: MARK J. SKIPPER, Esquire, 15 Southwest Tenth Street, Fort Lauderdale, Florida, 33315, this _____ day of February, 2006.

Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned hereby certified that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced, this _____ day of February, 2006.

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