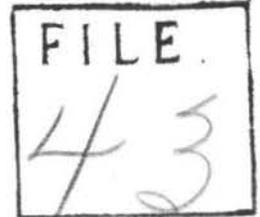


CRIMINAL LAW: A plea of guilty is not a final conviction which requires the revocation of a driver's license for driving while intoxicated.

May 2, 1942.

Mr. M. J. Huffman
Prosecuting Attorney
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Dear Sir:

We are in receipt of your request for an opinion under date of March 25, 1942, as follows:

"Section 9156, Revised Statutes of Missouri, 1939, provides in part, that after a conviction, or a plea of guilty, the courts and boards of parole named in said Section may suspend the imposition or execution of sentence of any person legally eligible for judicial parole under said Sections 4199 to 4211, inclusive, and may also place the defendant on probation.

"Section 8460, of said Revised Statutes, provides in part, that the commissioner shall forthwith revoke the license of any operator upon receiving a record of such operator's conviction of the offense of driving a motor vehicle while intoxicated, when such conviction has become final. And, Section 8459, of said Revised Statutes, provides in part that whenever any person is convicted of any offense for which this article makes mandatory the revocation of the operator's license of such person by the commissioner, the Court in which such conviction is had shall require the surrender to it of all operator's licenses then held by the person so convicted and the court shall thereupon forward the same

together with a record of such conviction to the commissioner.

"My reason for setting out the parts of the Statutes named above, is to ascertain in what status the operator's license is, when the defendant enters a plea of guilty to driving a motor vehicle when intoxicated, and pays all costs, including the Prosecuting Attorney's fee for conviction of the defendant; the court suspends imposition of sentence and the cause continued. Upon such state of facts, should the operator's license be revoked or is the convicted person entitled to operate his automobile after entering a plea of guilty to driving a motor vehicle while intoxicated?"

Since receipt of the above opinion request we have been advised that your request concerns only the abstract proposition set out therein and is not in relation to any cause now pending in any of the courts of this state.

The first question to be considered is whether a plea of guilty constitutes a "conviction" within the meaning of Section 8460, R. S. Mo. 1939.

A reference to Volume 9 of Words and Phrases, Permanent Edition, page 610, reveals that there is a wide disagreement as to whether a plea of guilty constitutes a conviction. We also find decisions in Missouri which may be interpreted as ruling both ways. The section which you mention in your request (Section 9156, R. S. Mo. 1939) contains the following language: "After a conviction, or a plea of guilty, the courts and boards of parole named in this Section may suspend the imposition or execution of sentence * * *," which strongly indicates that in the contemplation of the Legislature at least a plea of guilty was not the equivalent of a "conviction." The widespread application of the term, we think, is properly explained in the quotation from Doughty v. De Amorell, 22 R. I. 158, found in Vol. 9, Words and Phrases, page 611:

"In the strictest sense, a 'conviction' is not complete until it has become a judgment of the court by a sentence, since before that time a verdict may be set aside or a new trial granted for various causes. The term is commonly used, however, to denote the finding of fact that the accused is guilty."

On the same page is found also the following quotation from Ex parte Tanner, 88 P. 301, 49 Or. 31, which appears to be the proper rule:

"While in common parlance and for many purposes the word 'conviction,' when used in a statute, means the judicial ascertainment of guilt by a plea or verdict, when it is made the ground of some disability or penalty, it has been held that a final adjudication by judgment is essential, * * *."

The Supreme Court of Missouri in State v. Jonagan, 311 Mo. 540, has laid down the rule that the trial court is vested with discretion in permitting the withdrawal of a plea of guilty before judgment is entered on the plea.

Operator's, chauffeur's and driver's licenses or certificates are not revoked by the courts, but under the provisions of Section 8459, R. S. Mo. 1939, the court must require the surrender of the licenses or certificates by the defendant, and shall forward them to the commissioner of motor vehicles together with the record of the conviction of the defendant.

Section 8460, R. S. Mo. 1939, requires the revocation of driver's licenses upon final conviction in the following language:

"The commissioner shall forthwith revoke the license of any operator, registered operator or chauffeur upon receiving a record of such operator's, registered operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

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"1. Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle;

"2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug;

"3. Any felony in the commission of which a motor vehicle is used."

We believe that the words "when such conviction has become final," as used in the foregoing section, refer to a judgment and sentence entered on a verdict or a plea of guilty to an indictment or information, and not to a plea or verdict prior to sentence.

We do not regard the payment of costs by a defendant as bearing on the question at hand since a proper payment of costs by a defendant can be made only under judgment of the court before whom the cause is pending.

CONCLUSION

It is the conclusion of this department that it is mandatory on the commissioner of motor vehicles, under Section 8460, R. S. Mo. 1939, to revoke an operator's or chauffeur's license on receipt of the record of final conviction of a defendant for driving a motor vehicle while intoxicated, and that such final conviction applies only to a judgment and sentence entered on a verdict or plea of guilty, and not a verdict or plea prior to judgment and sentence.

Respectfully submitted

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