

To: Commission
From: Staff
Re: Title 39 – *State v. Moran* – loss of license for reckless driving
Date: September 7, 2010

MEMORANDUM

A. *Background.*

In *State v. Moran*, 202 N.J. 311 (2010), the New Jersey Supreme Court considered a case in which the defendant was found guilty in municipal court of reckless driving. The municipal court imposed penalties pursuant to the reckless driving section of the statute (*N.J.S.* 39:4-96) and, in addition, suspended the defendant’s license for a period of 45 days pursuant to *N.J.S.* 39:5-31. That section of the statute provides for the revocation of a driver’s license, without reference to a specific violation of Title 39, as follows:

The director or any magistrate before whom any hearing under this subtitle is had may revoke the license of any person to drive a motor vehicle, when such person shall have been guilty of such willful violation of any of the provisions of this subtitle as shall, in the discretion of the magistrate, justify such revocation.

The Law Division in *Moran* upheld the conviction and imposed the same sentence and the Appellate Division affirmed and identified standards to be applied in cases of license suspension pursuant to *N.J.S.* 39:5-31. In response, the defendant claimed that she did not receive “fair notice” of the license suspension provision “hidden” in *N.J.S.* 39:5-31. *State v. Moran*, 202 N.J. 311, 315 (2010). Defendant also claimed that the statute is “constitutionally vague or overbroad” and that it violates the due process provisions of the State and federal Constitutions since it affords judges “unbridled discretion to impose” a period of license suspension “without terms or limitation”. *Id.* at 320.

The Supreme Court found that *N.J.S.* 39:5-31 was not “hidden” as asserted by defendant. The Court did, however, define the term “willful violation”, so that license suspensions would be imposed in a “reasonably fair and uniform manner” and that similarly situated defendants would be treated similarly. *Id.* at 316. The Court also enunciated “sentencing standards to guide municipal court and Law Division judges” pursuant to its supervising authority over the court system “for the purpose of achieving just ends”. *Id.*

The Court explained that in the context of the reckless driving statute, the term “willful” suggests a “*deliberate* or *intentional* disregard of the lives and property of others in the manner in which a driver operates a vehicle” while in the license revocation statute, the term implies “a *deliberate* violation” of a motor vehicle statute. *Id.* at 323. As a result, in order to “trigger the license suspension provisions” of the statute in issue, the “state of mind and conduct” of the driver must “exceed reckless driving itself”, so the “driver must engage in an aggravated form of reckless driving”. *Id.*

The Court described the difference between reckless driving and a willful violation of the reckless driving statutes as “a matter of degree” with reckless drivers acting in a way that is

likely to endanger a person or property while drivers willfully violating the reckless driving statute act in a way that is *highly* likely to endanger a person or property. *Id* at 324.

Having thus defined the circumstances that warrant the invocation of the license suspension/revocation provisions of *N.J.S. 39:5-31*, the Court provided guidance to judges in the form of a list of factors that they are to consider “in determining whether to impose a suspension for a willful violation of a motor vehicle statute and, if so, the appropriate length of the suspension”. *Id.* at 328.

As the Court explained, it “essentially” affirmed the approach taken by the Appellate Division, offering guidance to the lower courts as follows:

we direct municipal court and Law Division judges to consider the following factors...the nature and circumstances of the defendant's conduct, including whether the conduct posed a high risk of danger to the public or caused physical harm or property damage; the defendant's driving record, including the defendant's age and length of time as a licensed driver, and the number, seriousness, and frequency of prior infractions; whether the defendant was infraction-free for a substantial period before the most recent violation or whether the nature and extent of the defendant's driving record indicates that there is a substantial risk that he or she will commit another violation; whether the character and attitude of the defendant indicate that he or she is likely or unlikely to commit another violation; whether the defendant's conduct was the result of circumstances unlikely to recur; whether a license suspension would cause excessive hardship to the defendant and/or dependants; and the need for personal deterrence. *Cf. N.J.S.A. 39:5-30c* (enumerating factors to be considered by MVC in determining appropriateness of imposing maximum suspension of three years). Any other relevant factor clearly identified by the court may be considered as well. It is not necessarily the number of factors that apply but the weight to be attributed to a factor or factors.

Id. at 328-329. In addition to considering the listed factors, the judge is also required to “articulate the reasons for imposing a period of license suspension”, a requirement designed to serve as an additional safeguard against arbitrary sentencing and to enhance appellate review.. *Id.* at 329.

In *Moran*, the Court reversed the Appellate Division’s affirmation of the Law Division’s suspension because neither the parties nor the courts had the benefit of the Supreme Court decision and the Court remanded for proceedings consistent with its opinion.

The approach of the Supreme Court in the *Moran* case appears to be a sensible one, well-supported by the available case law and designed to clarify the application of the statute. Proposed statutory language incorporating the Court’s determination is included below for Commission review.

In addition to approval or modification of the draft language, Staff seeks Commission guidance regarding whether to incorporate the Court’s clarification of the term “willful” violation (as a “deliberate or intentional” act or omission) into the Title in three other places in

which it appears (39:4-128.1, 39:6-55 and 39:9-4)¹ Staff's most recent review of the body of New Jersey statutes revealed 74 separate sections of the statute that make reference to offenses for which the loss of the driving privilege (suspension, revocation, forfeiture or a delay in the issuance of a license) is a potential consequence. 45 of those sections are contained within Title 39 and, of those, four make reference to "willful violation" of the Title or portions thereof.

B. Draft statutory language.

39A:E-18. Revocation or suspension of license

a. The Chief Administrator or a judge before whom a hearing under this Title is held may revoke or suspend the driver's license of a person when that person is found guilty of a willful violation of any provision of this Title and suspension or revocation is justified under subsection c. of this section.

b. For purposes of this section, "willful" shall refer to a deliberate act or omission.

c. A judge must consider the following factors in order to determine whether to impose a revocation or suspension for a willful violation of a motor vehicle statute and, if so, the appropriate length of the revocation or suspension:

1. the nature and circumstances of the defendant's conduct, including whether the conduct posed a high risk of danger to the public or caused physical harm or property damage;

2. the defendant's driving record, including the defendant's age and length of time as a licensed driver, and the number, seriousness, and frequency of prior infractions;

¹ *N.J.S.* 39:4-128.1, located in the chapter pertaining to traffic regulation (and dealing specifically with buses), provides, in part, that "The Director of the Division of Motor Vehicles may also revoke the license to drive a motor vehicle of any person who shall have been guilty of such **willful** violation of any of the provisions of this act as shall, in the discretion of the director, justify such revocation, but the director shall, at all times, have power to validate such a license which has been revoked, or to grant a new license to any person whose license to drive a motor vehicle shall have been revoked pursuant to this act."

N.J.S. 39:6-55, located in the chapter pertaining to financial responsibility, provides, in part, that "The Director of the Division of Motor Vehicles may also revoke the license to drive a motor vehicle of any person who shall have been guilty of such **willful** violation of any of the provisions of this act as shall, in the discretion of the director, justify such revocation, but the director shall, at all times, have power to validate such a license which has been revoked, or to grant a new license to any person whose license to drive a motor vehicle shall have been revoked pursuant to this act."

N.J.S. 39:9-4, located in the chapter pertaining to the hours of duty of operators of certain vehicles, provides, in part, that "The director or judge before whom any hearing under this chapter is had may revoke the license of any person to drive a motor vehicle or the registration certificate of any motor vehicle owned by any person, when such person shall have been guilty of such **willful** violation of any of the provisions of this chapter as shall in the discretion of the director or judge justify such revocation."

3. whether the defendant was infraction-free for a substantial period before the most recent violation;

4. whether the nature and extent of the defendant's driving record indicates that there is a substantial risk that he or she will commit another violation;

5. whether the character and attitude of the defendant indicate that he or she is likely or unlikely to commit another violation;

6. whether the defendant's conduct was the result of circumstances unlikely to recur;

7. whether a license suspension would cause excessive hardship to the defendant and/or dependants; and

8. the need for personal deterrence.

d. In addition to the factors set forth in subsection c. of this section, a judge may also identify and consider any other relevant factor.

e. If a person is found guilty of a provision of this Title that requires a willful action or omission to support that finding of guilt, the driver must be found to have engaged in an aggravated form of the underlying offense in order to be subject to the license revocation or suspension allowed by this section.