

To: Commission
From: Staff
Re: Title 39 – State v. Moran – loss of license for reckless driving
Date: November 8, 2010

REVISED 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 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.

B. Draft statutory language.

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

a. After a hearing before the Chief Administrator or at the time a judge imposes a sentence for a violation of this Title, the Chief Administrator or judge may revoke or suspend the driver’s license of a person found guilty of a willful violation of a provision of this Title when revocation or suspension is justified pursuant to subsections b. and c. of this section.

b. The Chief Administrator or judge shall consider the following factors 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. The Chief Administrator or judge shall place his or her findings regarding these factors on the record:

1. the seriousness of the underlying offense, including the nature and circumstances of the defendant's conduct and whether that conduct posed a high risk of danger to the public or caused personal injury or property damage;

2. the driving record of the defendant, including: the defendant's age; the defendant's length of time as a licensed driver; the number, seriousness and frequency of prior violations of this Title; the length of time during which the defendant's driving record was free of violations before the violation for which suspension or revocation is considered pursuant to this section; and whether the nature and extent of the defendant's driving record indicates a substantial risk that defendant will commit another violation;

3. the attitude of the defendant and whether it indicates that defendant is likely or unlikely to commit another violation of this Title and whether revocation or suspension is necessary to deter future violations by the defendant;

4. the circumstances surrounding defendant's conduct and whether they are likely or unlikely to recur;

5. the hardship to the defendant or any dependants of the defendant that would result from a license revocation or suspension. Only if the chief administrator or judge first determines that there is not a substantial risk that allowing defendant to continue to drive poses a significant risk of harm to others, may the chief administrator or judge consider whether a license revocation or suspension will cause excessive hardship to the defendant or any dependants.

c. In addition to the factors set forth in subsection b. of this section, the Chief Administrator or a judge may also identify and consider any other relevant factor, including the penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.

~~d. In the case of administrative proceedings before the Chief Administrator or an administrative law judge, a penalty imposed pursuant to this section shall be consistent with penalties imposed in similar cases and directives of the Chief Administrator.~~

COMMENT

The language of subsection a. is a revised version of 39:5-31. The balance of the language of this section is incorporated in the statute in response to the decision of the New Jersey Supreme Court in *State v. Moran*, 202 N.J. 311 (2010).

The Commission did not, as the Court did, define "willful" because that term is used in other places in the Title without definition and both the criminal law and the case law appear to contain adequate explanatory material.

The list of factors to be considered before the imposition of a revocation or suspension pursuant to this section of the statute provides some guidance, but it is limited. As a result, the Commission expressed concern about a lack of uniformity in the implementation of the new factors. Since administrative decisions are available for review, subsection d. initially required that newly imposed penalties be consistent with those imposed in earlier similar cases. Concerns were raised regarding this language, however, including a concern about the burden associated with requiring the Chief Administrator or designee to review all potentially relevant decisions and a concern about statutorily requiring consistency that might result in a continuing line of erroneous decisions. As a result of the concerns expressed by the Commission, the proposed mandatory language of subsection d. – which was not included in the New Jersey Supreme Court's opinion – was deleted. Based on guidance received from the Commission, however, the language was included in subsection c., which is not mandatory since it says "may", rather than "shall".