IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

EDWARD CARL KNITTEL,

Appellant,

Vs.

STATE OF TENNESSEE
DEPARTMENT OF SAFETY,

Appellee.

Davidson Chancery No. 98-2592-I
C.A. No. 01A01-9903-CH-00185

FROM THE DAVIDSON COUNTY CHANCERY COURT
THE HONORABLE IRVIN KILCREASE, JR., CHANCELLOR

Edward Carl Knittel, Pro Se

Paul G. Summers, Attorney Genreal & Reporter
Michael E. Moore, Solicitor General
William C. Bright, Assistant Attorney General
For Appellee

REVERSED

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE

This appeal involves the review of a Tennessee Department of Safety administrative hearing. Edward Carl Knittel (Knittel), petitioner/appellant, appeals the order of trial court affirming the decision of the Tennessee Department of Safety suspending petitioner's driving privileges for failure to pay traffic fines.

On October 10, 1997, Knittel was cited for violation of the automobile registration law and driving without a license.[1] Knittel is a member of the Embassy of Heaven Church which believes, among other things, that the state does not have the power to issue driver's licenses or require registration of motor vehicles.

Upon appearing in General Sessions Court of Gibson County in response to the citation, the judge fined Knittel five dollars ($5.00) and court costs on each offense. Knittel failed to pay the fines, and on December 9, 1997, the general sessions court issued a court action report requesting that the Department of Safety suspend Knittel's driving privileges.

The Department of Safety notified Knittel that his driving privileges were to be suspended. After receiving notice from the Department of Safety, he requested an administrative hearing before the department's review board. In a two part hearing, Knittel claimed, among other things, that the trial judge had not found him guilty at trial. The review board found otherwise and suspended his driving privileges.

Following the administrative hearing before the Department of Safety, Knittel filed a petition for review in Davidson County Chancery Court under the Administrative Procedure Act. Although Knittel's arguments were unclear to say the least, he apparently asserted that the State of Tennessee did not have the power to issue driver's licenses or regulate travel on public highways, that Tennessee violated the Uniform Commercial Code by the issuance and court procedures regarding the tickets he received, and that the general sessions judge erred by failing to have him waive his rights to indictment, presentment, grand jury investigation, and jury trial as required by Tennessee law. On January 9, 1999, the trial court denied Knittel's petition and upheld the Department of Safety's suspension of his driving privileges.

Knittel, *pro se*, timely appealed the trial court's order and asks this Court to determine the following issues found in his brief:

> 1. The findings of fact and conclusions of law set forth in the administrative order of the Department of Safety, as confirmed by the chancery court review, are in error in that they are based on the record of a court proceeding that was *coram non judice*.
>
> 2. The Department of Safety in its administrative order, as confirmed by chancery court review, exceeded its statutory authority in suspending Petitioner's driver's license.

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[1]Knittel was stopped for not having Tennessee license tags. Instead, the truck he was driving had tags issued by "Heaven." Also, Knittel's driver's license was issued not by a state, but instead by the Embassy of Heaven Church.

The administrative decision is subject to judicial review in the chancery court. T.C.A. § 4-5-322(b)(1) (1998). The review is by the chancellor without a jury and is confined to the record of the administrative body, except in cases involving procedural errors. T.C.A. § 4-5-322(g). The scope of review as prescribed in T.C.A. § 4-5-322(h) states:

> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (5) Unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

The scope of review in this Court is no greater than that of the chancellor. ***Watts v. Civil Serv. Bd. for Columbia***, 606 S.W.2d 274 (Tenn. 1980), ***cert. denied***, 450 U.S. 983, 101 S. Ct. 1519, 67 L. Ed.2d 818 (1981).

Knittel first argues that the findings of fact and conclusions of law of the administrative board are in error because they are based on the record of a court proceeding that was *coram non judice*[2]. He urges this Court to find that when the general sessions court proceeded to trial without a signed waiver of grand jury investigation or signed guilty plea, it exceeded its jurisdiction.

Knittel was charged with driving without a license and driving an unregistered vehicle, both Class C misdemeanors. T.C.A. § 40-1-109 (1997) states in pertinent part:

> [T]he court of general sessions is hereby vested with jurisdiction to try and determine and render final judgment in all

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[2]*Coram non judice* is defined as "[i]n presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and the judgment is void." **Black's Law Dictionary** 337 (6th ed. 1990).

> misdemeanor cases brought before the court by warrant or information wherein the person charged with such misdemeanor enters a plea of guilty in writing or requests a trial upon the merits and **expressly waives an indictment, presentment, grand jury investigation and jury trial. Such waiver shall be in writing** as provided in Rule 5 of the Tennessee Rules of Criminal Procedure.

(Emphasis added).

The warrants in this case contain typed provisions for Knittel to sign and waive his rights to an indictment, presentment, grand jury investigation, and jury trial. Knittel did not sign these waivers. "In all (except small) criminal offenses, the right to be proceeded against only by indictment or presentment and to a trial by jury are grounded upon provisions of Tenn. Const., art. 1, §§ 6, 14. These constitutional rights may be relinquished only by a valid written waiver." ***State v. Morgan***, 598 S.W.2d 796, 797 (Tenn. Crim. App. 1979); ***see also State v. Ridley***, 791 S.W.2d 32, 34 (Tenn. Crim. App. 1990).

Small offenses are defined "in Tennessee as one in which the punishment cannot exceed a fine of $50.00 and which carries no confinement in a jail or workhouse." ***State v. Dusina***, 764 S.W.2d 766, 768 (Tenn. 1989) (overturning previous decisions of the Court of Criminal Appeals defining small offenses as those which cannot impose a fine in excess of $50.00 and/or a prison term of six months or less). In the present case, Knittel was ticketed for violation of the vehicle registration law and driving without a license, both of which are class C misdemeanors. T.C.A § 55-3-102, 55-50-351 (1998), 55-50-301 (1998). Class C misdemeanors carry a possible term of imprisonment of not more than thirty (30) days and/or a fine not to exceed $50.00. T.C.A. § 40-35-111 (e)(3) (1997). Thus, the charges against Knittel were not small offenses.

The trial judge in this case erred in not having Knittel sign the waivers, and his conviction was invalid.

Knittel's next argues that the Department of Safety exceeded its authority in suspending his driving privileges. The Tennessee legislature granted the Department of Safety the power to suspend driving privileges. T.C.A. § 55-50-502 (1998) provides:

> **Suspension of licenses -- Hearings -- Period of suspension or revocation -- Surrender of license -- Restricted license -- Operating under license of another jurisdiction prohibited -- Appeal. --**
>
> (a) The department is hereby authorized to suspend the license of an operator or chauffeur upon a showing by its records or other

sufficient evidence the licensee:

* * *

> (8) Has been finally convicted of any driving offense in any court and has not paid or secured any fine or costs imposed for that offense;
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> (9) Has failed to . . . answer or to satisfy any traffic citation issued for violating any statute regulating traffic. . . . Prior to suspending the license of any person as authorized in this subsection, the department shall notify the licensee in writing of the proposed suspension and, upon the licensee's request, shall afford the licensee an opportunity for a hearing to show that there is an error in the records received by the department; . . . .

Following Knittel's failure to pay the fines, the Department of Safety sent him notice of the pending suspension of his driver's license.[3] Knittel produced evidence that he appeared in court and that he had not waived an indictment, presentment, grand jury investigation, and jury trial. Following the hearings, the board issued findings of fact and conclusions of law which found that Knittel received but failed to satisfy two citations, and that suspension of his driving privileges was appropriate. Knittel answered the citations as required by T.C.A. § 55-50-502 (a)(8). In the present case, Knittel's conviction was not valid because the court failed to comply with T.C.A. § 40-1-109. ***See Ridley***, 791 S.W.2d at 34. The ruling of the administrative board based upon the general sessions finding of guilt was "unsupported by evidence which is both substantial and material in light of the entire record." T.C.A. § 4-5-322(h)(5).

The order of the trial court affirming the administrative board is reversed. Costs of appeal are assessed against the appellee.

Appellant should not construe this Opinion as an authorization to drive a motor vehicle on the public roads of this state. The record is undisputed that appellant is not licensed to drive as required by T.C.A. § 55-50-301 (1998). Appellant's operation of a vehicle on public roads without the required license could result in convictions for each offense and ultimately conviction under the "motor vehicle habitual offenders act," T.C.A. § 55-10-601 with the resulting additional penalties.

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[3] In the administrative hearing record the Department of Safety's representative explains that when an individual is cited for a traffic violation, has no driver's license, and fails to pay the fine, the Department of Safety issues that person a driver's license number. This is done so that if that individual ever attempts to obtain a driver's license he or she will have to satisfy the requirements of the suspension prior to obtaining a license. It appears to this Court that it is somewhat anomalous to proceed to suspend a driver's license that has never been issued.

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

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ALAN E. HIGHERS, JUDGE

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DAVID R. FARMER, JUDGE