IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 03C01-9605-CC-00198
Appellee,	*	SEVIER COUNTY
VS.	*	Hon. Rex Henry Ogle, Judge
RANDY A. McCLURE and	*	(Habitual Motor Vehicle Offenders)
TEDDY G. OWNBY,	*	
Appellants.	*	

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OPINION FILED:_____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendants, Randy McClure and Teddy Ownby, appeal from a judgment of the trial court declaring each of them habitual motor vehicle offenders. Tenn. Code Ann. §§ 55-10-601 to -618. The single issue presented for review is whether a prior conviction for driving under the influence precludes, on double jeopardy principles, a subsequent proceeding under the Habitual Motor Vehicle Offenders Act.

We affirm the judgment of the trial court.

The facts are not in material dispute. According to the petition by the state, the defendant McClure was convicted of driving while intoxicated twice in 1987 and once in 1993. He was convicted of reckless driving in 1991. The defendant Ownby was convicted of driving under the influence once in 1984 and twice in 1994; he was convicted of reckless driving in 1991 and driving on a suspended license in 1994.

A habitual offender is defined as follows:

> Any person who, during a three-year period, is convicted in a Tennessee court or courts of three (3) or more of the following offenses; any person who, during a five-year period, is convicted in a Tennessee court or courts of three (3) or more of the following offenses; or any person who, during a ten-year period, is convicted in a Tennessee court or courts of five (5) or more of the following offenses; provided, that if the five- or ten-year period is used, one (1) of such offenses occurred after July 1, 1991....

Tenn. Code Ann. § 55-10-603(2)(A). Included among the offenses qualifying under the act are driving under the influence of an intoxicant, driving on a suspended license, and reckless driving. See Tenn. Code Ann. §§ 55-10-401, 55-50-504, and 55-10-205. In this regard, each of the defendants clearly qualified as habitual motor

vehicle offenders. At the conclusion of the proceeding, the trial court entered judgments barring the defendants from operating a motor vehicle on the highways of this state.

The defendants contend that the procedure violated the Fifth Amendment to the United States Constitution and article I, section 10 of the Tennessee Constitution. The basis of their claim is that a license forfeiture under the act at issue qualifies as a second punishment.

In State v. Conley, 639 S.W.2d 435 (Tenn. 1982), our supreme court held, under similar circumstances, that there was no violation of either the state or federal double jeopardy clause. It ruled that the revocation of a license was "nothing more than the deprivation of a privilege, ... 'remedial in nature,' and ... not intended to have the effect of imposing 'punishment' in order to vindicate public justice." Id. at 437. The defendants argue, however, that more recent federal cases mandate a different result in this case. Their contentions are based in great measure upon the ruling in United States v. Halper, 490 U.S. 435, 437 (1989), which provided that "the labels 'criminal' and 'civil' are not of paramount importance" in determining whether a sanction constitutes punishment for double jeopardy purposes:

> The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law, and for purposes of assessing whether a given sanction constitutes multiple punishment barred by the Double Jeopardy Clause, we must follow the notion where it leads.
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> [A] civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment ....

Id. at 447-49; see Austin v. United States, 509 U.S. 602 (1993).

Recently, however, the United States Supreme Court considered an issue very similar to that presented by the defendants in this case. Holding that in rem forfeitures are neither "punishment" nor "criminal" for double jeopardy consideration, the court held in two separate actions that the forfeiture of property as a result of a civil complaint did not bar a subsequent criminal prosecution. United States v. Ursery and United States v. $405,089.23 in United States Currency, ____U.S. ____, 116 S. Ct. 2135 (1996). The ruling was based in great measure upon the rationale of In re Various Items of Personal Property v. United States, 282 U.S. 577, 581 (1931):

> [A] forfeiture proceeding ... is in rem. It is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient. In a criminal prosecution it is the wrongdoer in person who is proceeded against, convicted and punished. The forfeiture is no part of the punishment for the criminal offense. The provision of the Fifth Amendment to the Constitution in respect of double jeopardy does not apply.

282 U.S. 577, 581 (1931)(citations omitted).

So long as a forfeiture procedure is civil or remedial in nature, not intended as an additional punishment, there is no constitutional protection. United States v. One Assortment of Eighty-Nine Firearms, 465 U.S. 354, 362 (1984). The forfeiture proceeding in Ursery applies by analogy to the situation at hand. It supports our supreme court's 1982 holding in Conley. It is our view that the state action under the Motor Vehicle Habitual Offenders Act is remedial and not intended to inflict punishment. See State v. Coolidge, 915 S.W.2d 820 (Tenn. Crim. App. 1995); State v. Grapel Simpson, No. 02C01-9508-CC-00239 (Tenn. Crim. App., at Jackson, August 2, 1996). License revocation proceedings under the Act are civil in nature. Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991). A legitimate goal of the Act is to promote safety on the public roadways by denying

driving privileges to those with a record of indifference. Both of the defendants qualify as having abused their privilege to drive.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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David H. Welles, Judge

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Jerry L. Smith, Judge