

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

MARCH 1998 SESSION

**FILED**

June 2, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellant, )  
 )  
 VS. )  
 )  
 JAMES E. THOMPSON, )  
 )  
 Appellee. )

NO. 02C01-9706-CC-00213

LAUDERDALE COUNTY

HON. JOSEPH H. WALKER,  
JUDGE

(Habitual Motor Vehicle Offender)

FOR THE APPELLANT:

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OPINION FILED: \_\_\_\_\_

REVERSED AND REMANDED

**JERRY L. SMITH,**  
JUDGE

## OPINION

The State of Tennessee appeals the order of the trial court dismissing its petition to have the defendant, James E. Thompson, declared an Habitual Motor Vehicle Offender (HMVO) pursuant to Tenn. Code Ann. § 55-10-603. We reverse the ruling of the trial court and remand the case for further proceedings consistent with this opinion.

### I.

The defendant was arrested on three (3) separate occasions in 1993 and 1994 for driving under the influence of an intoxicant and was convicted the same years. The second and third convictions were adjudicated on the same day, although committed on different days. The District Attorney General filed a petition to have the defendant classified as an HMVO. A hearing was held where the defendant, represented by counsel, admitted that the convictions were valid. Although acknowledging the validity of the three (3) prior DUI convictions in 1993 and 1994, the trial court declined to declare the defendant an HMVO noting:

- (1) all three (3) DUI convictions were treated as first offenses by the respective courts; and
- (2) the rehabilitative efforts and present circumstances of the defendant indicate that an HMVO declaration would be inappropriate.

The state appeals this ruling.

### II.

Habitual offender status may be conferred upon one who, during a three (3) year period, is convicted of three (3) or more of the offenses enumerated in Tenn. Code Ann. § 55-10-603(2)(A)(Supp. 1997). Driving an automobile under the influence of an intoxicant, Tenn. Code Ann. § 55-10-401, is one of the listed

offenses. Tenn. Code Ann. § 55-10-603(2)(A)(viii)(Supp. 1997).

Tenn. Code Ann. § 55-10-603 does not allow discretion in the trial court. If a defendant is found to have been validly convicted of the requisite number of enumerated offenses within the applicable time period, the defendant will be declared an HMVO. See Tenn. Code Ann. § 55-10-613(a). Rehabilitation efforts and the present circumstances of a defendant are irrelevant to the HMVO declaration.

The trial court erroneously considered the two (2) convictions adjudicated on the same day as one (1) offense. The Habitual Offender Act does provide that offenses committed on the same day will count as one offense for the purposes of HMVO status. Tenn. Code Ann. § 55-10-604(b). The defendant, however, was arrested for driving under the influence of an intoxicant on three (3) separate occasions. The dates of adjudication are of no relevance except in determining the applicable period in which the convictions must occur to have HMVO status conferred. See Tenn. Code Ann. § 55-10-604(c).

Furthermore, the fact that the prior convictions were treated by the respective courts as first offenses is irrelevant. Habitual offender status simply requires three (3) convictions of the enumerated offenses, committed on different dates, within the three-year period. See Tenn. Code Ann. §§ 55-10-603(2)(A), 604(Supp. 1997).

Accordingly, the judgment of the trial court is reversed and the case is remanded for further proceedings consistent with this opinion.

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**JERRY L. SMITH, JUDGE**

**CONCUR:**

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**GARY R. WADE, PRESIDING JUDGE**

**Not Participating<sup>1</sup>**  

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**JOE B. JONES, JUDGE**

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<sup>1</sup>Presiding Judge Joseph B. Jones died on May 1, 1998. This court is indebted to Judge Jones for his lifetime of contribution to the bench and bar of this State.