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Do not
publish MW
June 12, 1951 See
State De Berry Case

To Paul A. MacDonald, Deputy Secretary of State
Re: Maynard Peasley case

In your memo of June 11, 1951, you state that one Maynard Peasley had been convicted by the Bucksport Municipal Court of driving under the influence of intoxicating liquor; that upon appealing the decision of the trial court, the court permitted Mr. Peasley to retain his license pending appeal. On appeal in the Hancock Superior Court, before a jury, Mr. Peasley was found guilty, and sentenced to the Men's Reformatory, exceptions were filed and allowed, and the case is now pending in the Law Court. The Superior Court made no order with reference to the license.

Being desirous of removing Mr. Peasley from the highway by suspending his license without the formality of a hearing, you then ask for answers to the following questions:

"1. Does the order of the Bucksport Municipal Court, permitting the retention of the license pending appeal, carry over after the Superior Court assumes jurisdiction, the respondent is tried, and convicted and an appeal taken from such conviction?"

In answer to this question, the pertinent portion of the statute in question should be quoted and considered:

Sec. 121, Ch. 19, R.S. 1944:

"If any person convicted of any violation of the provisions of this section shall appeal from the judgment and sentence of the trial court, his license and right to operate a motor vehicle in this state shall be suspended during the time his appeal is pending in the appellate court, unless the trial court shall otherwise order, or unless the secretary of state, after a hearing, shall restore the license or permit pending decision on the appeal. . ."

We first note that it is only where an appeal is taken from the judgment and sentence of the trial court that the trial court may order a retention of the license by the accused. Under the facts stated by you, it would appear that the method of review taken from the Superior Court is not an appeal, but rather a writ of error.

Writ of error is not an appeal. Morrill v. Buker, 92 Me. 389.

"And under modern statutes, where the appeal of error proceeding is in the nature of a writ of error, the judgment is not vacated or annulled by the taking of the review proceeding."

3 Am. Jur. 189.

It would appear, therefore, that only in cases of appeal, which brings up the entire cause for trial de novo in the appellate court, may the trial court permit the accused to retain his license; and that when the accused is found guilty on appeal then his license should be suspended. This proceeding is a review by writ of error and the statute in question applying only to cases of appeal, the jurisdiction of the trial court is terminated.

The general rule is recognized that a duly perfected appeal or writ of error divests the trial court of further jurisdiction of the cause in which the appeal has been taken. The jurisdiction over the action is transferred to the appellate court. 3 Am. Jur. 192. The license having been retained pending appeal, and the judgment of the appellate court being "guilty", then the mandatory provision of Sec. 121 shall take effect, and the license should be suspended. The answer then to Question #3 is "No."

Your second question is: "If in your opinion the order of the Bucksport Municipal Court does not carry over after the Superior Court assumes jurisdiction of the case does the case revert to its original status before the order of court; namely, that the license shall be suspended pending appeal?"

In view of the preceding discussion, the answer to Question #2 is, "Yes."

Question #3 is: "Assuming that Judge Sullivan, who, I understand, sat at the April term, wishes to now make an order relative to the suspension or retention of the license can he do so after the expiration of the term of court at which the case was tried?"

Having answered Question 2 in the affirmative, I believe it unnecessary to go into a discussion of Question #.

James G. Frost
Assistant Attorney General