

Max A. TAUSCH *v.* STATE of Arkansas

CR 85-4

685 S.W.2d 802

Supreme Court of Arkansas
Opinion delivered March 18, 1985

1. **AUTOMOBILE — DWI ACT SENTENCING PROVISIONS ARE MANDATORY.** — The sentencing provisions of the Omnibus DWI Act are mandatory.
2. **COURTS — NO INHERENT AUTHORITY TO SUSPEND EXECUTION OF SENTENCES — POWER TO GRANT THAT AUTHORITY IN GENERAL ASSEMBLY.** — Courts have no inherent authority to suspend the execution of sentences; the power to grant or withhold that authority rests with the General Assembly.
3. **AUTOMOBILE — DWI ACT — NO CONCLUSIVE PRESUMPTION OF GUILT.** — Under the act the blood-alcohol level does not create a conclusive presumption of guilt or compel a person to incriminate himself.

Appeal from Polk Circuit Court; *Gayle Ford*, Judge; affirmed.

Tucker & Thrailkill, by: *Patricia A. Tucker* and *Danny Thrailkill*, for appellant.

Steve Clark, Att'y Gen., by: *Joyce Rayburn Greene*, Asst. Att'y Gen., for appellee.

GEORGE ROSE SMITH, Justice. This is another in a number of cases questioning the validity of the Omnibus DWI Act. Act 549 of 1983. In this case Tausch pleaded guilty in the municipal court to a first DWI offense, but he contested the charge in the circuit court. After a non-jury trial the circuit court made a finding of guilty and imposed the same punishment as that in the municipal court: Twenty-four hours in jail, a 90-day suspension of Tausch's driver's license, and a \$500 fine. Among many arguments presented to the circuit court, only two are asserted on appeal.

First, it is argued that the statute violates the constitutional separation of governmental powers by prohibiting

trial judges from suspending the execution of the sentences mandated by the act. In a supplemental opinion on rehearing in *Lovell v. State*, 283 Ark. 434, 681 S.W.2d 395 (1984), we held that as a matter of statutory interpretation the sentencing provisions of the Omnibus DWI Act are mandatory. The constitutional question was not then before us, but we have no hesitancy in upholding the validity of the act. In *Hill v. State*, 276 Ark. 300, 634 S.W.2d 120 (1982), we adhered to our many prior cases holding that the courts have no inherent authority to suspend the execution of sentences; the power to grant or withhold that authority rests with the General Assembly. Those cases are controlling here.

The appellant's second argument, that under the act the blood-alcohol level creates a conclusive presumption of guilt and compels a person to incriminate himself, has been rejected in earlier cases construing the Omnibus DWI Act. *Steele v. State*, 284 Ark. 340, 681 S.W.2d 354 (1984); *Lovell v. State*, 283 Ark. 425, 678 S.W.2d 318 (1984).

Affirmed.