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A Matter of (Mis)Interpretation: Using Dispositions of Supervision in Illinois DUI Sentencing

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I. Introduction

In the state of Illinois, a third DUI violation is a Class 2 felony. But, under Illinois law, even if a defendant gets a DUI charge dismissed after successfully completing a sentence of supervision, that sentence can be used as one of the three violations to upgrade a DUI to a Class 2 felony. This understanding, while accepted by a majority of the Illinois Supreme Court, violates basic principles of statutory construction and contradicts the common public understanding of the words of the statute.

In some first-time traffic offenses, Illinois judges have the discretion to impose a sentence of supervision. When a person receives a sentence of supervision, they are first given a set of restrictions. After a set period of time, they must appear before the judge, demonstrate compliance with the restrictions, and then the charge can be dismissed. The law provides that a dismissal after successful completion of supervision, "shall be deemed *without adjudication of guilt*."[1] The purpose of a sentence of supervision is to impress upon the defendant the seriousness of their actions, while also showing a reasonable amount of mercy. To this end, the plain text of the statute commands that a defendant shall be considered not guilty of an underlying alleged

[1] Unified Code of Corrections, 730 ILCS 5/5-6.3.1(f) (2021).

violation after successfully completing a sentence of supervision. Accordingly, they would not be responsible as a matter of law. Unfortunately, a majority of the Illinois Supreme Court disagreed with this reading, and this permits the state to impose harsher penalties against defendants. Illinois law provides that "Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol…[if] the person committed a violation of subsection (a) or a similar provision for the third or subsequent time."[2]

A third violation is a Class 2 felony. This statute - §11-501(d)(1)(A) - transforms what could be a misdemeanor charge into a felony with potentially severe consequences. Here is where the danger of accepting a sentence of supervision lies: the charge for which a defendant received supervision can be counted as a "violation" for the purposes of §11-501(d)(1)(A). Under the current majority rule, two "violations" of a DUI statute is a misdemeanor, and three "violations" - including the violation for which there was never a finding of guilt - is a felony. This means that a defendant who is told that they will not be found guilty of an alleged offense can actually face a felony charge later because they chose to accept supervision.

Some might argue that if a defendant is truly innocent, then they should not accept a sentence of supervision in the first place. However, the mere fact that a defendant accepts such a sentence does not mean they concede guilt. Consider a similar, though not identical, issue — pardons. The US Court of Appeals for the Tenth Circuit recently noted that a defendant's "acceptance of the pardon did not have the legal effect of a confession of guilt" even though it may "make the pardonee look guilty by implying or imputing that he needs the pardon."[3] The same holds true here: acceptance of supervision, by its terms, does not have the *legal* effect of a confession of guilt, even if it may make the defendant *look* guilty.

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[2] Illinois Vehicle Code, 625 ILCS 11-501(d)(1)(A) (2019).

[3] *Lorance v. Commandant,* No. 20-3055, Fastcase, 1, 8, (10th Cir. Sept. 23, 2021)

Unfortunately, a majority of the Illinois Supreme Court rejected this understanding of supervision laws. In truth, however, the original public understanding of these statutes supports this reading and compels the conclusion that sentences of supervision may not be counted against a defendant for purposes of statutes that punish repeated violations of the same law (known as recidivism statutes).

II. The Current Majority Rule

In 1995, the Illinois Supreme Court addressed this question in *People v. Sheehan*.[4] Kane County prosecutors charged two defendants – Henry Sheehan and Victor Pall – with felony DUI. Typically, DUI is a misdemeanor, but since both Mr. Sheehan and Mr. Pall each had records with one previous DUI conviction and one previous successfully completed DUI with a supervision disposition, the state charged them with aggravated felony DUI. The state's theory was that, even though there was never a finding of guilt with the original DUI, it should count as a violation for recidivism purposes. The trial court disagreed with the State and dismissed the cases, the State appealed, and the Illinois Second District Appellate Court affirmed the dismissal. The Illinois Supreme Court, however, reversed the trial and appellate decisions.

The Court recited the procedural history and explained the authority split on this matter. The Second and Fifth Districts held that sentences of supervision could not be counted as violations for enhancement purposes; the First, Third, and Fourth Districts found the opposite.[5] The Supreme Court then turned to the merits, considering what it means to commit a violation for the purposes of DUI recidivist laws. The Court concluded that "the word 'commit' is to perpetrate, as a crime; to perform an act," and that the term 'committed' "has a broader scope

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[4] 659 N.E.2d 1339 (Ill. 1995).

[5] Compare *People v. Sheehan,* 633 N.E.2d 151 (Ill. 2nd Dist. 1995); *People v. Harrison,* 225 Ill.App.3d 1018 (Ill. 5th Dist. 1992) with *People v. Winkler,* 618 N.E.2d 661 (Ill. 1st Dist. 1993); *People v. Lambert,* 619 N.E.2d 534 (Ill. 3rd Dist. 1993); *People v. Tinkham*, 639 N.E.2d 917 (Ill. 4th Dist. 1994).

than the term 'convicted'."[6] The Court argued that the legislature used the word "committed" to broaden the scope of actions that could be used as enhancements. On this basis, the Court determined that even sentences of supervision count as committing a violation for future sentencing purposes.

Justice Moses Harrison dissented. His arguments focused, first, on the Rule of Lenity, which counsels that ambiguities in criminal statutes should be resolved in favor of the defendant. Second, he discussed the legislative history of DUI law and recidivism statutes.[7] Finally, because of the ambiguity of the statute, Justice Harrison posits that the Rule of Lenity demands that the statute be read in favor of the defendant. That reading compels the conclusion that prosecutors may not use supervision dispositions to enhance a DUI to felony.

III. The Original Public Understanding

In Illinois courts, "the cardinal rule of statutory construction is to ascertain the intent of the legislature."[8] To determine the legislative intent, courts begin with the plain text of the statute, and the statute's words "are to be given their ordinary and popularly understood meaning."[9] In this way, while Illinois courts adhere to an original-intent form of Originalism, their textualist analysis conforms to Justice Scalia's original-public-meaning Originalism. For this reason, we approach the meaning of Illinois law from this original-public-meaning perspective.

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[6] *Supra* note 4 at 1343 (citing Black's Law Dictionary 273 (6th ed. 1990)) (internal quotation marks omitted).
[7] *Supra* note 4 at 1345 (Harrison, J., dissenting) (While Justice Harrison's argument related to legislative history is compelling, the canons of interpretation counsel that interpretation begins with the ordinary meaning of a text. See *infra* note 8. Additionally, legislative history is a dubious source of intent. *Indeed,* the "use of legislative history is not just wrong; it violates constitutional requirements of non delegability, bicameralism, presidential participation, and the supremacy of judicial interpretation." Antonin Scalia & Bryan Garner, *Reading Law: the Interpretation of Legal Texts*, 388 (2012), *see also,* Adrian Vermeule, *Legislative History and the Limits of Judicial Competence: the Untold Story of* Holy Trinity Church, 50 Stan. L. Rev. 1833, 1896 (1998). For these reasons, we do not consider or address legislative history).
[8] *Stewart v. Industrial Comm'n*, 504 N.E.2d 84, 86 (Ill. 1987).
[9] *Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 177, 447 N.E.2d 394, 396 (Ill. 1983).

Under this framework, there are two words in 625 ILCS 11-501(d)(1)(A) that undercut the Supreme Court's analysis in *Sheehan*: "committed" and "violation". The word 'commit' means "to carry into action deliberately: perpetrate."[10] While an individual can certainly perpetrate a crime without being caught, as a matter of law, a crime has not been committed without a finding of guilt. Recall: a sentence of supervision shall be "deemed *without* adjudication of guilt."[11] If there is not a finding of guilt, then the defendant would not be responsible for the crime as a matter of law.

Second, the term "violation". While "violation" indeed covers more than the term "conviction" – a point made and addressed by the *Sheehan* majority – it is still limited. 'Violation' means "an infraction or breach of the law."[12] Since every defendant is innocent until proven guilty, the default assumption – until a fact finder determines guilt – is that the defendant did not breach the law. This presumption, being foundational to American law, surely impacts what the public understands to be a violation of a statute. Once again, sentences of supervision are *without adjudication of guilt*. If a court does not enter a finding of guilt against a Defendant, then it is impossible to maintain that the Defendant violated a statute as a matter of law. It is also worth noting, as Justice Harrison did in his dissent, that fair-minded jurists could disagree about the application of this sentencing rule. If the rule was unanimous among the appellate courts, the Supreme Court would have never taken the case. But, since there was disagreement, the Rule of Lenity ought to apply. This, on its own, is enough to see the flaw in *Sheehan*.

IV. Conclusion

The supervision statute in Illinois exists to give a warning to motorists who make the mistake of driving drunk. Defendants are reeled in, being told that it will not be considered a

[10] Bryan A. Gardner, *Commit*, Black's Law Dictionary, 308 (7th ed. 2016).
[11] *Supra* note 1.
[12] *Supra* note 10 at 1705.

conviction and that the court will not find them guilty of the alleged offense if the defendant successfully completes the supervision requirements. Unfortunately, Illinois' current practice of using those supervision sentences against motorists undercuts the less-severe nature of supervision. Though it may seem counterintuitive to some, acceptance of supervision, by its terms, does not have the *legal* effect of a confession of guilt, even if it may make the defendant *look* guilty. If a charge is dismissed "without an adjudication of guilt," then, as a matter of law, the defendant did not violate the statute. It is fundamentally unfair to hold a defendant accountable for a previous action that the court told him he was not guilty of committing. Justice Harrison, along with the Second and Fifth District Appellate courts, got it right: supervision cannot be used to enhance a sentence under a recidivist statute.

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