

01-031

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED.

MOTOR VEHICLES: LICENSURE OF DRIVERS.

COURTS NOT OF RECORD: JURISDICTION AND PROCEDURE, CRIMINAL MATTERS.

VIRGINIA SUPREME COURT RULES: GENERAL RULES APPLICABLE TO ALL PROCEEDINGS.

District court is without jurisdiction to order issuance of restricted permit to individual whose conviction for second offense driving while intoxicated occurred in October 1998.

The Honorable Timothy S. Fisher
Judge, Seventh Judicial District of Virginia
December 28, 2001

You ask whether a general district court has the statutory authority to issue a restricted operator's permit to an individual whose conviction pursuant to § 18.2-271.1 of the *Code of Virginia* occurred two and one-half years earlier.

You relate that, in October 1998, the general district court convicted an individual of a second offense of driving while intoxicated and, in accordance with the requirements of § 18.2-271(B), the individual lost his driving privileges for a period of three years.¹ You further relate that, at the time of his conviction, the individual did not seek a restricted permit, nor was he placed in an alcohol safety action program pursuant to § 18.2-271.1. You also advise that the individual later appealed his conviction to the circuit court. You further advise that the individual now seeks to obtain a restricted permit and inquire as to the district court's statutory authority to issue such permit two and one-half years after the conviction.

Section 18.2-266 pertains to driving under the influence of drugs or alcohol, and § 18.2-270(A) provides that a violation of § 18.2-266 is a Class 1 misdemeanor. Under § 18.2-271.1, as enacted at the time of the conviction, a court had the discretionary authority to order a person convicted of a second offense under § 18.2-266 to enter into an alcohol safety action program and to also provide that such person receive a restricted permit to operate a motor vehicle.² Reading § 18.2-271.1 in conjunction with § 18.2-271, the General Assembly intends that courts have discretion in determining how long an individual convicted of driving while intoxicated should be deprived of his operator's license and under what circumstances, provided that individual enters and successfully completes an alcohol safety action program.³ Importantly, under these statutes, a defendant is not convicted of any offense until he or she completes such program.⁴ In the instant case, however, you advise that the individual did not enter such a program.

A prior opinion of the Attorney General concludes that a district court is without jurisdiction to enter any further orders beyond twenty-one days after final disposition of a case unless such time limit is extended by a specific statute.⁵ The opinion notes that § 16.1-133.1, which allows a district court that has convicted a

person of a nonfelonious criminal charge to reopen his case on motion of the convicted person for good cause shown, extends such time period to a total of sixty days.⁶ The opinion is in accord with a decision of the Supreme Court of Virginia, holding that a district court retains jurisdiction over its final judgment within the period specified by statute.⁷ In the instant case, where the individual seeks to obtain from the district court an order for the issuance of a restricted permit beyond any statutory limitations applicable to the court's final judgment in his case, the district court is clearly without jurisdiction to issue such an order.

Accordingly, based on the facts presented, it is my opinion that the district court's final judgment in this matter was rendered in October 1998, and therefore, the court has no jurisdiction over the matter.

¹See Va. Code Ann. § 46.2-391(A) (Michie Supp. 2001) (requiring three-year license revocation for second offense of driving while intoxicated).

²See 1998 Va. Acts ch. 703, at 1625, 1625-26 (reenacting § 18.2-271.1(A), (C), (E)).

³See 1984-1985 Op. Va. Att'y Gen. 195, 196.

⁴See 1981-1982 Op. Va. Att'y Gen. 256, 258.

⁵1992 Op. Va. Att'y Gen. 155, 156, 157 (noting that provision in Virginia Supreme Court Rule 1:1, which permits final order or judgment to be modified, suspended or vacated for no longer than twenty-one days after entry, generally applies to district courts).

⁶*Id.* at 157.

⁷Commonwealth v. Zamani, 256 Va. 391, 507 S.E.2d 608 (1998).

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