

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 170680-U

NO. 4-17-0680

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 7, 2018

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Douglas County
SHAWN M. BAHRS,)	No. 10CF85
Defendant-Appellant.)	
)	Honorable
)	Richard Lee Broch, Jr.,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Where the Secretary of State mailed a confirmation of suspension to the defendant at his last known address, the State complied with statutory notice requirements and provided the defendant due process.

¶ 2 On August 23, 2010, the State charged defendant, Shawn M. Bahrs, by information with aggravated driving under the influence (count I) (625 ILCS 5/11-501(a)(2) (West 2010)) and driving while driver’s license revoked (count II) (625 ILCS 5/6-303(d-3) (West 2010)). On August 30, 2010, the Secretary of State mailed a confirmation of statutory summary suspension to defendant’s last known address. The confirmation explained the requirement that in order to obtain judicial review of his statutory suspension, defendant must act within 90 days after notice of the suspension.

¶ 3 On September 6, 2016, defendant filed a motion to rescind the summary suspension of his driver’s license. On October 11, 2016, defendant filed a motion for judgment

by default. On the same day, the State filed a motion to strike defendant's petition, alleging defendant filed the petition outside the 90-day statutory requirement. On July 13, 2017, the circuit court denied defendant's motion to rescind his summary suspension and his motion for default judgment.

¶ 4 Defendant appeals, asserting the circuit court violated his due process rights when it denied his motion for judgment by default that alleged the State failed to give him notice of a 90-day limitation for filing a motion to rescind the summary suspension. He further argues the court's failure to conduct a hearing within 30 days required that the court automatically rescind his suspension. We affirm.

¶ 5 I. BACKGROUND

¶ 6 On August 23, 2010, the State charged defendant by information with aggravated driving under the influence (count I) (625 ILCS 5/11-501(a)(2) (West 2010)) and driving while driver's license revoked (count II) (625 ILCS 5/6-303(d-3) (West 2010)). The information alleged defendant committed the offense of driving while driver's license revoked on three previous occasions. Between August 24, 2010, and September 13, 2010, defendant was in custody in Douglas County.

¶ 7 On August 30, 2010, the Secretary of State sent a confirmation of statutory summary suspension to defendant's last known address. This form explained defendant had 90 days to petition the court for judicial review of his summary suspension. The Secretary of State sent the notice to the same address defendant provided when completing an affidavit of assets and liabilities while in custody on August 27, 2010. On September 28, 2011, the State dismissed the charges against defendant, resulting in his release from the Douglas County jail.

¶ 8 On September 6, 2016, defendant filed a motion to rescind the summary suspension of his driver's license. Defendant argued that in violation of his right to due process, the State failed to notify him of the statutory requirement that any request for judicial review of his suspension occur within 90 days after notice of a statutory suspension.

¶ 9 On October 11, 2016, defendant filed a motion for judgment by default, arguing that the trial court's failure to hold a hearing within 30 days required the court to grant his petition to rescind. On the same day, the State filed a motion to strike defendant's petition as untimely, asserting more than 90 days elapsed between the notice of the suspension and the filing of the petition to rescind his suspension. It appears the State based its allegation of untimeliness on defendant's receipt of the warning to motorist form in conjunction with his arrest.

¶ 10 On October 19, 2016, defendant responded to the State's motion to strike. Defendant argued that even if he did receive notice, the notice lacked any information about the 90-day requirement, thus tolling the running of the 90 days.

¶ 11 On July 13, 2017, the circuit court issued an order denying defendant's motion to rescind his summary suspension and his motion for default judgment. The circuit court stated:

“[O]n August 30, 2010, *** the Illinois Secretary of State's Office filed with the Clerk of this Court the Confirmation Of Statutory Summary Suspension, which was mailed from that Office to the Defendant at his last known address. *** [T]hat page specifically refers to the defendant's right to petition for judicial review within 90 days after service *** of the Notice of the Statutory Summary Suspension ***. This notice, pursuant to the Secretary's Confirmation of Statutory Summary Suspension, caused the 90-day time limitation for filing of a petition to rescind.”

The circuit court observed defendant did not file his petition to rescind his summary suspension until September 6, 2016, more than 90 days after the Secretary of State mailed defendant the confirmation of statutory summary suspension containing the explicit language concerning judicial review of the suspension.

¶ 12 On July 25, 2017, defendant filed a motion to reconsider. Defendant again argued the August 30, 2010, notice was deficient because defendant was in custody when the State sent the notice to defendant's last known address. Defendant argued the State knew of his incarceration, which prevented him from receiving any information sent to his last known address.

¶ 13 On November 13, 2017, the circuit court held a hearing on defendant's motion to reconsider. The circuit court denied defendant's motion, agreeing with the State that where the Secretary of State sent the confirmation of statutory summary suspension to defendant's last known address, for purposes of the law, defendant received notice, and the 90-day period began to run at that time.

¶ 14 This appeal followed.

¶ 15 **II. ANALYSIS**

¶ 16 On appeal, defendant asserts the circuit court violated his due process rights when it denied his motion for judgment by default that alleged the State failed to give him notice of a 90-day limitation for filing a motion to rescind the summary suspension. He further argues the court's failure to conduct a hearing within 30 days required the court to automatically rescind his suspension. The State argues this appeal is moot. However, in light of the progressive nature of the suspension and revocation of driving privileges, we elect to address the claims of defendant on the merits. We affirm.

¶ 17

A. Effective Notice

¶ 18 First, we consider whether the mere mailing of the notice perfected service under the Illinois Vehicle Code (Vehicle Code). 625 ILCS 5/1-100 to 20-402 (West 2010). Defendant argues that instead of sending the notice to his last known address, he should have received notice at the Douglas County jail because he resided there from his arrest on August 24, 2010, to September 13, 2010, when he made bail. The State argues service is effective under the Vehicle Code upon mailing of notice as long as the notifying party had no reason to know the notice would not reach the intended recipient.

¶ 19 The Vehicle Code outlines the required notice and method of delivery to apprise individuals of a suspension. A statutory suspension shall not become effective until a defendant is notified in writing of the suspension and told of his right to request a petition for judicial review. 625 ILCS 5/2-118.1(a) (West 2010). Per Section 11-501.1 of the Vehicle Code (625 ILCS 5/11-501.1 (h) (West 2010)), “the Secretary of State shall confirm the statutory summary suspension *** by mailing a notice of the effective date of the suspension *** to the person[.]” The Secretary of State conforms when the notice is “deposited in the United States mail, in a sealed envelope, with postage prepaid, addressed to the party affected thereby at his last known residence[.]” 625 ILCS 5/6-211(c) (West 2010). Deciding if we have proper service in this matter involves an issue of statutory interpretation subject to *de novo* review. *People v. Davis*, 2012 IL App (2d) 110581, ¶ 31, 972 N.E.2d 793.

¶ 20 To determine whether the notice provided satisfied the Vehicle Code, we apply principles of statutory construction. We first look to the plain language of the statute. *People v. Woodard*, 175 Ill. 2d 435, 443, 677 N.E.2d 935, 939 (1997). “Where clear and unambiguous, statutory language must be enforced as enacted, and a court may not depart from its plain

language by reading into it exceptions, limitations, or conditions not expressed by the legislature.” *People ex rel. Devine v. \$30,700.00 United States Currency*, 199 Ill. 2d 142, 150-51, 766 N.E.2d 1084, 1089 (2002).

¶ 21 The express language in the Vehicle Code describing the required notice and methods of effecting notice state notice is perfected when it is mailed to the last known address of the person whose license is statutorily suspended. The meaning of this provision is clear and unambiguous. The Vehicle Code does not condition effective notice on actual receipt of the notice by the intended party. Thus, when the Secretary of State sent the confirmation of statutory summary suspension to defendant's last known address, the notice was effective.

¶ 22 B. Due Process

¶ 23 Defendant argues the denial of due process because he did not receive actual notice of the 90-day limit to file a petition for judicial review of his statutory summary suspension. According to the circuit court, “[the State] did what [it] had to do under the statute in order to show notice was given.” The State argues actual notice is not an issue, relying on *Davis*, 2012 IL App. (2d) 110581, ¶ 33, for the holding even though notice in that case was returned undeliverable, the State complied with the notice required by the Vehicle Code. Whether defendant was afforded due process is an issue of law subject to *de novo* review. *Devine*, 199 Ill. 2d at 155.

¶ 24 “Due process entails an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights.” *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 432, 551 N.E.2d 640, 648 (1990). The standard does not require actual notice but rather the State “*must attempt to provide actual notice.*” (Emphasis in original.) *Dusenbery v. United States*, 534 U.S. 161, 170

(2002). The due process clause “requires only that the Government’s effort be ‘reasonably calculated’ to apprise a party of the pendency of the action[.]” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)).

¶ 25 Defendant relies on *Robinson v. Hanrahan*, 409 U.S. 38 (1972), to support his argument that the State violated his right to procedural due process. He argues the State should have given defendant a copy of the notice at a hearing at which he appeared or at the Douglas County jail—his location when the notice went out.

¶ 26 Defendant improperly relies on *Robinson* in support of the contention the State should have sent notice to the Douglas County jail to provide defendant procedural due process. In *Robinson*, the defendant faced a charge of armed robbery. *Id.* at 38. While defendant awaited trial in custody, the State initiated forfeiture proceedings against the defendant’s automobile he used to commit the robbery. *Id.* Pursuant to its obligation to notify defendant of the forfeiture action, the State sent notice to defendant's home. The trial court ordered forfeiture of the automobile at an *ex parte* hearing. *Id.* at 39. On appeal, the Supreme Court reversed, finding because the State knew of defendant's incarceration, they also knew he would not receive notice. *Id.* at 40.

¶ 27 Here, defendant alleges “[t]he circuit court did not tender a copy of this notice to [defendant], knowing he was in custody” but offers no proof to support the claim that the Secretary of State knew of his incarceration. In fact, three days before the Secretary of State sent notice of defendant’s suspension, defendant supplied his address to the court in an affidavit of assets and liabilities. Defendant argues the Secretary of State knew he would not receive notice, but on his affidavit, he provided the same address used by the Secretary of State. The record

fails to demonstrate that the Secretary of State had contrary information regarding defendant's address.

¶ 28 We observe defendant fails to argue the Secretary of State mailed notice to the incorrect address; rather, defendant argues that he did not actually receive it. Here, it is not as if before defendant's release from the Douglas County jail, the 90-day period expired. There is no indication defendant's mail, sent to a post office box, failed to remain in his box. We find the notice satisfied the requirement that it be reasonably calculated to notify defendant. Thus, the requirement of due process was satisfied upon mailing of the confirmation of suspension containing notice of the 90-day-after-notice period to seek judicial review.

¶ 29 Given defendant received effective notice in accordance with due process, his petition to rescind, filed well outside 90 days after notice, failed to meet statutory requirements. Therefore, the trial court properly denied defendant's motion for entry of default judgment on his petition to rescind statutory suspension.

¶ 30 III. CONCLUSION

¶ 31 We affirm the circuit court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 32 Affirmed.