

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

WILLIAM T. GIBBONS,) **S. Ct. Crim. No. 2012-0002**
Appellant/Defendant,) Re: Super. Ct. Crim. No. 437/2011 (STX)
)
)
v.)
)
PEOPLE OF THE VIRGIN ISLANDS,)
Appellee/Plaintiff.)
)
)
_____)

On Appeal from the Superior Court of the Virgin Islands
Considered: October 9, 2012
Filed: December 6, 2012

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

ATTORNEYS:

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OPINION OF THE COURT

HODGE, Chief Justice.

William T. Gibbons appeals from the Superior Court’s January 27, 2012 “Judgment and Sentence,” which suspended his driving privileges for two years. For the reasons that follow, we reverse the portion of the “Judgment and Sentence” that suspends Gibbons’s license.

I. STATEMENT OF RELEVANT FACTS AND PROCEDURAL POSTURE

After a traffic stop on June 15, 2011, the People subsequently charged Gibbons with

possession of a controlled substance with intent to distribute and operating a motor vehicle without a safety belt. The parties negotiated a plea agreement, in which Gibbons agreed to plead guilty to simple possession of a controlled substance. On December 29, 2011, the Superior Court held a change-of-plea hearing, where it accepted the guilty plea, and chose to proceed directly to sentencing. *See* Super. Ct. R. 134(a) (“Sentence shall be imposed immediately after a defendant has been found guilty or has pleaded guilty . . .”).

At sentencing, Gibbons requested probation in lieu of a conviction pursuant to section 607(b)(1) of title 19 of the Virgin Islands Code. In addition, recognizing a recent Superior Court decision holding that individuals who receive section 607(b)(1) treatment must nevertheless have their driving privileges suspended pursuant to section 378(a) of title 20, Gibbons argued, “since there will never have been actually an adjudication of guilt” if section 607(b)(1) treatment is granted, “there would not be a reason to—or actually [any] authority for the Court to suspend his license.” (J.A. 34.) The People did not make any recommendation regarding the driver’s license issue. (J.A. 36.) The Superior Court orally granted the request for section 607(b)(1) treatment, sentenced Gibbons to nine months of probation, and revoked his driving privileges for two years. The Superior Court memorialized its decision in a January 27, 2012 “Judgment and Sentence,” (J.A. 5-6), and Gibbons timely filed his notice of appeal.

II. DISCUSSION

A. Jurisdiction and Standard of Review

“The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.” V.I. CODE ANN. tit. 4 § 32(a). In this case, the January 27, 2012 “Judgment and Sentence,” despite its caption, did not fully adjudicate all issues in this case, for section 607(b)(1) conditions dismissal

of a charge upon successful completion of probation. Nevertheless, this Court possesses jurisdiction over this appeal because it was still a final order within the meaning of section 32. See *Rohn v. People*, S. Ct. Crim. No. 2011-0087, 2012 WL 5901924, at *2 (V.I. Nov. 27, 2012).

The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007); see also *People v. John*, 52 V.I. 247, 255 (V.I. 2009) (quoting *United States v. Shields*, 458 F.3d 269, 276 (3d Cir. 2006)), *aff'd* 654 F.3d 412 (3d Cir. 2011).

B. The Superior Court Imposed an Illegal Sentence

On appeal, both Gibbons and the People argue that section 378(a) of title 20 does not apply to first-time offenders receiving probation in lieu of conviction pursuant to section 607(b)(1) of title 19. This Court recently answered this very question by concluding that "the Legislature did not intend for section 378(a) to apply to defendants who receive section 607(b)(1) probationary treatment." *Rohn*, 2012 WL 5901924, at *3. Although the Superior Court lacked the benefit of our decision in *Rohn* when it sentenced Gibbons, we must, for the same reasons given in *Rohn*, correct the illegal sentence.

III. CONCLUSION

For the foregoing reasons, we hold that the Superior Court erred when it determined that section 378(a) of title 20 mandated it to suspend Gibbons's driver's license. Accordingly, we reverse the portion of the January 27, 2012 "Judgment and Sentence" that revokes Gibbons's driving privileges for two years.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court