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CRIMINAL DIVISION
Case No. 24-CR-10389

State of Vermont v. James Chase

DECISION AND ORDER
STRIKING THE SENTENCING ENHANCEMENT IN COUNT I

Defendant James Chase has filed a motion seeking to strike the recidivist sentencing enhancement in this matter. The State opposes the motion. The issue before the court is one of statutory construction - how to apply a forgiveness period in the DUI sentencing statute that was enacted in 2019. Based on the undisputed record, this court concluded that this offense is punishable only pursuant to 23 V.S.A. § 1210(b) as a first offense. The court reached this conclusion based on the plain language of that statute and for reasons not addressed by either party in the briefing. This court then ordered additional briefing, and the State filed a supplemental memorandum maintaining its position that this matter is properly considered a third offense. For the reasons set forth more fully below the court disagrees. The plain and unambiguous language of the DUI sentencing statute requires that this be treated as a first offense. Such a result is not absurd. The sentencing enhancement is stricken.

1. Relevant procedural and factual history[1]

On October 3, 2024, the State charged Defendant in two count Information with offenses including DUI-2. On October 7, 2024, the State filed an amended Information alleging a DUI-3. The State charged that

> James Chase, in the County of Windham, at Dover on or about August 30, 2024, operated, attempted to operate, or was in actual physical control of a motor vehicle on a public highway while under the influence of alcohol, in violation of 23 V.S.A. §1201(a)(2), and has previously been convicted twice of violating 23 V.S.A. §1201 on 09/10/04 from Greenfield District Court, MA and 03/11/2003 Docket Number 293-3-03Wmcr.
>
> Penalty: Imprisoned not more than 5 years or fined not more than $2,500.00 or both. At least 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence.

[1] The court has relied on its own records — including the case summary and the parties' filings — in making its findings regarding the relevant procedural history. If either party objects to the court taking such notice, a written objection must be filed within five days of this order. V.R.E. 201(e).

See Amended Information. The State filed a supplemental affidavit noting the existence of a conviction from Massachusetts. Defendant was arraigned on October 8, 2024, entered a plea of not guilty and was released on conditions.

On March 26, 2025, Defendant filed a motion to dismiss asserting that the State could not establish that the charge was a third offense DUI. The State filed a memorandum in opposition on April 8, 2025. In conjunction with the opposition the State filed certified copies of court records establishing that Defendant had two prior DUI convictions.

Date of Violation	Date of Conviction[2]
February 28, 2003	September 10, 2004
February 23, 2003	March 11, 2003

On May 7, 2025, this court issued an entry order providing the parties an opportunity to submit supplemental briefing regarding the construction of 23 V.S.A. § 1210 – the DUI sentencing statute. The court noted that it's construction of the relevant statutes would require the State to establish that a defendant had prior convictions and violations within a certain period of the *conviction* for the newly charged offense and *not* as of the date the offense was alleged to have occurred.

Defendant did not submit any further pleading. On May 21, 2025, the State filed a responsive memorandum. The State noted the extensive legislative findings associated with a 1998 enactment. Memorandum at 2-4. Among the findings noted by the State were

> (8) *There is no credible evidence that legislation that increases DUI penalties has any measurable effect on the incidence of DUI and DUI–related fatalities*, while laws designed to increase the certainty of apprehension and punishment have had a deterrent effect. Emphasis must be on increased detection of DUI and stricter enforcement of DUI laws.
> …
> (12) Reducing DUI requires vigorous enforcement and *swift imposition* of driver suspension.

Id. at 3-4 (quoting Act 117, § 1 (1998) (eff. July 1, 1998)) (emphasis supplied). The State noted that subsequent enactments further increased the penalties for DUI recidivist offenses. *Id*. at 5. The State then addressed the 2019 enactment incorporating a forgiveness period into 23 V.S.A. § 1210. The State urged the court to consider other portions of that enactment and particularly an amendment to the statute governing sealing and expungement – 13 V.S.A. § 7602.[3] Memorandum at 7-8. The State noted that it

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[2] "For the purposes of computing offenses …, references to section 1201 of this title shall be construed to include sections of present or prior law of this *or any other jurisdiction* that prohibited operating … a motor vehicle on a highway while under the influence of alcohol …." 23 V.S.A. § 1211 (emphasis supplied).
[3] The statute has been amended. See Act 60 (2025).

> is incontrovertible that it was the Legislature's intent that the date of the present violation be the controlling date for the purpose of imposing an enhanced penalty for a subsequent violation of 23 V.S.A. § 1201(a), as opposed to the date of the conviction. To conclude otherwise would also result in an illogical and absurd outcome.

Id. at 8. The State then argued that

> Applying the Court's reasoning, a defendant could avoid punishment for repeatedly violating § 1201(a) in any given twenty-year period by simply waiting out the prosecution and the court's calendaring of their case. This would be incongruent with the Legislature's historic intent that these offenders be punished harshly. It would also require the reviewing court to conclude that the Legislature intended a defendant avoid the consequences of their actions not on the merits of a case, not as punishment for the State's violation of a defendant's constitutional rights, but by relying on court backlog or by engaging in unnecessary discovery or delay. Moreover, it would be contrary to apparent concerns over case backlog, which dates to before the instant topic became law.

Id. Continuing, the State argued that there was an ambiguity in the interpretation of the statute – "the first that has been applied by all practitioners for nearly the last six years" and the one the court "devise[d]" in this matter. *Id.* at 9. The State argued that any ambiguity did not trigger the application of the rule of lenity because only the State's interpretation was reasonable. *Id.* at 10. The State asserted that this court's construction of the statute was "the product of an exercise in strict interpretation that results in a conclusion at odds with historical legislative intent as applied to our DUI statutes as well as the prism applied to interpret these statutes." *Id.* at 10. The State then identified a parade of horribles it asserted would flow from this court's construction of the statute:

> under this court's scheme (1) a person would be charged with a misdemeanor DUI in every case; (2) once that case resulted in a conviction and if the defendant had a prior DUI a second case would be charged and would wind its way through the court process; (3) if that second charge was a felony a defendant would not be permitted to conduct a deposition of the fact witnesses in the underlying DUI under Rule 15 but would be permitted to depose witnesses to assure that there was a record of conviction for that defendant within the past twenty years.

Id. at 12.

No hearing is necessary since there are no facts in dispute and the issue presented is one of law.

2. Statutory construction

The issue before the court is a matter of statutory construction. In construing a statute, a court's "principal goal is to effectuate the intent of the Legislature." *Tarrant v. Department of Taxes,* 169 Vt. 189, 197 (1999).

> In determining legislative intent, we begin with the plain meaning of the statutory language. If legislative intent is clear from the language, we enforce the statute

> 'according to its terms without resorting to statutory construction.'" [*State v.*] *LeBlanc,* 171 Vt. 88, 91 (2000) (quoting *Tarrant v. Department of Taxes,* 169 Vt. 189, 197 739 (1999)) (internal citations omitted). "Furthermore, we 'presume that all language in a statute was drafted advisedly, and that the plain ordinary meaning of the language used was intended.' " *Id.* at 91(quoting *Committee to Save Bishop's House v. Medical Center Hospital,* 137 Vt. 142, 153 (1979)).

State v. Delisle, 171 Vt. 128, 134 (2000). To emphasize, if legislative intent is clear from the plain meaning of the statutory language, this court must enforce the statute "according to its terms without resorting to statutory construction." *Tarrant*, 169 Vt. at 197. See also *Scott v. State*, 2021 VT 39, ¶ 13 ("our purpose is to discern and give effect to the Legislature's intent, and where a provision is clear, we assume it reflects that intent. Only where a statute's language is ambiguous will we invoke canons of statutory interpretation to aid in determining legislative intent") (citations omitted); *Off. of Child Support ex rel. Lewis v. Lewis*, 2004 VT 127, ¶ 7 ("When considering claims that arise under a statute, we apply the plain meaning of the statute's words because we presume it reflects the Legislature's intent"). Additionally, "words that are not defined within a statute are given their plain and ordinary meaning, which may be obtained by resorting to dictionary definitions." *State v. Gauthier*, 2020 VT 66, ¶ 7 (quotation omitted). See also *State v. Turner*, 2021 VT 30, ¶ 10. While statutes should not be construed to produce absurd or illogical results, this

> rule does not … provide a license to substitute this Court's policy judgments for those of the Legislature. As the leading authority on statutory construction has cautioned, "the absurd results doctrine should be used sparingly because it entails the risk that the judiciary will displace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said." 2A N. Singer, Statutes and Statutory Construction § 46.07, at 199 (6th ed.2000). Thus, as one court has cogently explained, the doctrine merely permits an otherwise reasonable construction when a plain reading of the statute "would produce a result demonstrably at odds with any conceivable legislative purpose." *Taylor–Hurley v. Mingo County Bd. of Educ.,* 551 S.E.2d 702, 710 (W.Va. 2001); see also *Colwell v. Allstate Ins. Co.,* 2003 VT 5, ¶ 11 (declining to reinterpret terms of statute under absurd results doctrine where plain reading would not cause it to "fail in its essential purpose").

Jud. Watch, Inc. v. State, 2005 VT 108, ¶ 16. The Court has cautioned that "a statute is not absurd simply because it causes an outcome that a litigant believes to be anomalous or perhaps unwise." *Billewicz v. Town of Fair Haven*, 2021 VT 20, ¶ 28 (cleaned up). A construction is absurd if "it is quite impossible that [the Legislature] could have intended the result and where the alleged absurdity is so clear as to be obvious to most anyone," *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 706 (2d Cir. 2019), or where it "defies rationality or renders the statute nonsensical and superfluous." *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147, 152 (3d Cir. 2018).

3. Vermont's DUI sentencing statute

The relevant provisions of the DUI sentencing statute provide that

> (b) First offense. A person who violates section 1201 of this title may be fined not more than $750.00 or imprisoned for not more than two years, or both.

> (c) Second offense. A person convicted of violating section 1201 of this title who has been convicted of another violation of that section within the last 20 years shall be fined not more than $1,500.00 or imprisoned not more than two years, or both.
> (d) Third offense. A person convicted of violating section 1201 of this title who has previously been convicted two times of a violation of that section, including at least one violation within the last 20 years, shall be fined not more than $2,500.00 or imprisoned not more than five years, or both.

23 V.S.A. § 1210.[4] The amended statute provides for a forgiveness period – a twenty-year lookback. The statutory lookback operates by setting a date – the triggering event – and then determining whether another specific event has occurred within twenty years of that date.

The relevant statutory terms include "convicted," "conviction" and "violation." For purposes of Title 23, conviction (and, thus, convicted) means "an unvacated final adjudication of guilt" and "a plea of guilty or nolo contendere that has been accepted by the court." 23 V.S.A. § 4(60). Cf. V.R.Cr.P. 32(b). There is no statutory definition of violation. According to the Merriam-Webster Dictionary violation means an "infringement" or a "transgression."[5] In the context of § 1210 the reference to violation clearly refers to *conduct* violating 23 V.S.A. § 1201 such as operating a motor vehicle on a highway while under the influence of alcohol. 23 V.S.A. § 1201(a)(2).

The court must determine what the triggering event is for purposes of calculating the forgiveness period – the State asserts that it is the violation of 23 V.S.A. § 1201 – the conduct that is the basis for the present charge. The relevant statutory provisions – subsections (c) and (d)[6] – provide that "a person *convicted* of violating section 1201 of this title who has … been convicted." This language is different from the language in subsection (b) providing for a penalty when for "a person who *violates* section 1201." Applying a plain language analysis and giving effect to all language in the subsections, the court concludes that the triggering event must be the *conviction* for the present offense *not* the violation date for the present offense.[7] To read the statute otherwise would be ignore the plain language of the statute and presume the Legislature meant "violation" when it expressly used a different and defined term. That is not a plain language construction. The determination of which

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[4] These provisions were amended in 2019 as follows:

> (c) Second offense. A person convicted of violating section 1201 of this title who has been convicted of another violation of that section <u>within the last 20 years</u> shall be fined not more than $1,500.00 or imprisoned not more than two years, or both. …
> (d) Third offense. A person convicted of violating section 1201 of this title who has previously been convicted two times of a violation of that section<u>, including at least one violation within the last 20 years,</u> shall be fined not more than $2,500.00 or imprisoned not more than five years, or both.

Act. 32, § 9 (2019), eff. July 1, 2019.

[5] https://www.merriam-webster.com/dictionary/violation

[6] The court notes that the same language is present in subsection (e) regarding sentencing for fourth or subsequent offenses.

[7] The Legislature has enacted statutes providing that the present violation – the commission of the present offense – is the triggering event. See, e.g., 13 V.S.A. § 1044(a)(2)(A) ("A person commits the crime of second degree aggravated domestic assault if the person … Commits the crime of domestic assault; and has a prior conviction within the last 10 years for violating an abuse prevention order issued under section 1030 of this title"). This court presumes that the Legislature used different language in 23 V.S.A. § 1210 advisedly.

recidivist penalty applies if any, must be made at the time the defendant is adjudicated guilty of the pending charge.

Having determined that the triggering event for calculating the forgiveness period is the date of conviction for the present offense the calculation of whether there is a second offense, or a third or fourth or subsequent offense turns on the slight but meaningfully different language adopted by the Legislature in § 1210(c), (d) & (e). Again, the plain meaning is clear. For a second offense the question is whether at the time of conviction the defendant has a prior conviction that occurred within twenty years. It matters not when the violation resulting in the prior conviction occurred. For a third offense – and for a fourth or subsequent offense because the same language is used – the question is whether at the time of conviction the defendant has a prior conviction for a violation that occurred within twenty years. While the date of the conviction for the present offense cannot be known at arraignment the dates of the past events – whether violations or convictions – are readily known.

Thus, for example, if a defendant is convicted on January 1, 2025, of a DUI and that defendant has a prior conviction that occurred on or after January 1, 2005, then the present conviction is a second offense no matter when the earlier violation occurred. However, if the same defendant is convicted of a DUI on January 1, 2025, and the defendant has two or more prior convictions at least one of which was on or after January 1, 2005, then the determination of the present conviction as a second, third, or fourth or subsequent offense depends on whether the violation that resulted in the most recent prior conviction was on or after January 1, 2025. If the answer is no, then it is a second offense. If the answer is yes, then it is a third, or fourth or subsequent offense. Again, the plain language is clear.

The legislative intent is clear from the plain meaning of 23 V.S.A. § 1210 and this court must enforce the statute according to its terms without resorting to statutory construction.

4. This result is not absurd

The State suggests that this result is absurd. The State's argument is fundamentally a policy disagreement with the Legislature. It is not *inconceivable* or *impossible* that the Legislature made a policy choice that a penalty enhancement could or should depend on the date of conviction not the date of offense.[8] *Jud. Watch, Inc. v. State*, 2005 VT 108, ¶ 16; *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d at 706. The State's assertion that such a policy may be unwise does not make the policy absurd. *Billewicz v. Town of Fair Haven*, 2021 VT 20, ¶ 28. This court declines to find its application of the plain language of the relevant statutes absurd.

5. The State's parade of horribles is unpersuasive

The State asserts that the court's interpretation of the enhancement statute will preclude the filing of felony DUI charges, will prevent depositions in DUI cases and will have a variety of other consequences. This is simply not the case.

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[8] Indeed, the Legislative findings cited by the State do not support the State's assertions that harsh punishment is an effective deterrent.

A criminal charge is *necessarily* a prediction of what the State expects to be able to prove. If a defendant has a prior conviction for DUI and that conviction is not more than 20 years before the arraignment date, then the State can file a DUI-2. It may be that the State cannot obtain a conviction before the forgiveness clause becomes operative but that is a matter for the State. In its memorandum the State takes a surprisingly passive view of the State's ability to move a criminal charge to a conclusion. A prosecutor's office must establish priorities. If the State is concerned that a defendant may be able to avoid an enhanced penalty by delaying a proceeding the State should take all steps necessary to expedite the matter and move it to a speedy resolution.[9] The same general theory applies to third or fourth or subsequent offenses. If a defendant has two or more prior conviction for DUI and the most recent conviction is based on conduct occurring not more than 20 years before the arraignment date, then the State can file a DUI-3 or more.

The State's arguments regarding charging possibilities and practices and discovery "appear to be more of a parade of horribles than an argument grounded in reality." *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 2019 WL 2996508, at *4 (C.D. Cal. Apr. 23, 2019).

6. The statute is not ambiguous

The State asserts there is ambiguity. There is not. An ambiguity requires that there are at least two reasonable and contradictory constructions of the statute. As noted above, the plain language is clear. The State apparently wishes the statutory language were other than it is. A disagreement about plain meaning is not ambiguity. However, if there were ambiguity the rule of lenity would favor the court's construction of the statute.

> "In interpreting a criminal statute, the rule of lenity requires us to resolve any ambiguity in favor of the defendant." *State v. LaBounty*, 2005 VT 124, ¶ 4. The rule of lenity does not apply, however, when the statutory language is unambiguous. *State v. Fuller*, 168 Vt. 396, 402 (1998). Further, "[t]he rule of lenity is not used to narrow a statute that has an unambiguously broad thrust." *United States v. Litchfield*, 986 F.2d 21, 22 (2d Cir. 1993).

In re A.P., 2020 VT 86, ¶ 17, *cert. denied sub nom. A. P. v. Vermont*, 141 S. Ct. 2630 (2021). See also *State v. Wainwright*, 2013 VT 120, ¶ 6 ("Although we generally apply a rule of lenity, it does not apply if the statutory language is unambiguous.") There must be actual ambiguity for the rule to apply – "where there is an ambiguity in a statute which admits of two reasonable and contradictory constructions, that one which operates in favor of the person accused under its provisions is to be preferred." *State v. Quinn*, 165 Vt. 136, 141 (1996) (Allen, C.J., dissenting).

> The rule of lenity is not a rule in the usual sense, but an aid for dealing with ambiguity in a criminal statute. Under the rule of lenity, a court that is confronted with an otherwise unresolvable ambiguity in a criminal statute that allows for two possible interpretations of the statute will opt for the construction that favors the defendant. For a court that is construing a statute, the rule of lenity is not a means for determining—or defeating—legislative intent. Rather, it is a tie-goes-to-the-

[9] For example, the State could ensure that discovery is disclosed more promptly than required in the court's standard scheduling order, the State could ensure that witnesses are available for deposition immediately in a felony matter, or the State could request the earliest possible pre-trial conference and jury draw.

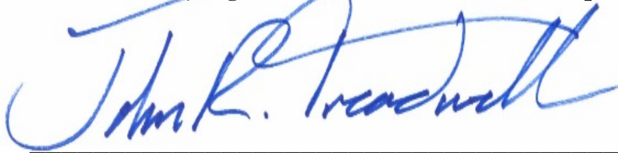
> runner device that the court may turn to when it despairs of fathoming how the General Assembly intended that the statute be applied in the particular circumstances. It is a tool of last resort, to be rarely deployed and applied only when all other tools of statutory construction fail to resolve an ambiguity. This follows from the fact that our goal in construing statutes is always to ascertain and carry out the legislative purpose of the statute and not to seek out an interpretation that necessarily favors one party or the other.

State v. Wilson, 240 A.3d 1140, 1164-65 (Md. 2020). Here, there is no ambiguity, and the court need not resort to the rule of lenity.

7. Order

Defendant is charged with DUI in the instant offense but has yet to be convicted. The earliest possible conviction date is today. Thus, for *any* enhancement to apply Defendant must have a conviction or violation occurring on or after this date twenty years ago – July 3, 2005. Given that all prior convictions and violations occurred more than twenty years ago no recidivist enhancement applies, this matter is punishable pursuant to 23 V.S.A. § 1210(b) as a first offense and the enhancement is stricken.

Electronically signed: 7/3/2025 9:07:05 AM pursuant to V.R.E.F. 9(d)



John R. Treadwell
Superior Court Judge