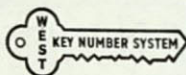


the opinion that such prior conviction was admitted as an extraneous offense because it was thought same showed system. We think such previous conviction failed to show system, and did not come within the exceptions allowing such proof.

[5] Bill of exceptions No. 3 complains because the State was allowed to ask appellant while he was on the witness stand the following question: "Haven't you been convicted of drunk driving in other counties adjoining Wise County?" It is true the witness answered "I don't remember," but in line with our holding as to bill No. 2 this question should not have been propounded to appellant.

On account of the error shown in bill No. 2, this judgment is reversed and the cause remanded.



HASSELL v. STATE.

No. 23353.

Court of Criminal Appeals of Texas.

May 15, 1946.

1. Automobiles ⇨137

Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or chauffeur is not required to have an operator's license. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

2. Automobiles ⇨351

Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators' commercial operators' and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in

the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

Commissioners' Decision.

Appeal from Hunt County Court; Wm. C. Parker, Judge.

W. Lee Hassell was convicted of operating a motor vehicle upon a highway without a license, and he appeals.

Reversed and prosecution ordered dismissed.

G. C. Harris, of Greenville, for appellant.

Ernest S. Goens, State's Atty., of Austin, for the State.

DAVIDSON, Judge.

The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of \$50.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State. Sec. 2 of Article II of the Act reads as follows:

"Drivers must have license.

"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

"(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty for the violation.

[1] It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, to-wit, State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

[2] Only three types of licenses are authorized or required under the Act. These are "operators," "commercial operators," and "chauffeurs," and they are specially defined in the Act. The term "driver"—as used in the Act—is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

PER CURIAM.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

194 S.W.2d—26

Ex parte HUDDLESTON.

No. 23378.

Court of Criminal Appeals of Texas.

May 1, 1946.

Rehearing Denied May 22, 1946.

1. Habeas corpus ⇨4

An accused may not resort to habeas corpus as a substitute for an appeal.

2. Infants ⇨68

Any burden upon state to show in the first instance that accused was more than 17 years old, and thus not subject to the Juvenile Delinquency Act, was discharged when, upon hearing under his plea of guilty, accused testified that he was 17 years old and made the same statement in confession introduced in evidence. Vernon's Ann.Civ.St. art. 2338—1 §§ 12, 13.

3. Habeas corpus ⇨22(1)

Where accused stated in confession that he was 17 years old and testified to the same effect upon trial, no appeal was taken from conviction of felony theft on his plea of guilty, and judgment was regular on its face, accused was not entitled to release on habeas corpus on the ground that conviction was void because accused was only 15 years of age when convicted and could not be convicted of crime under the Juvenile Delinquency Act. Vernon's Ann.C.C.P. arts. 10a, 11; Vernon's Ann. Civ.St. art. 2338—1 §§ 12, 13.

On Motion for Rehearing.

4. Criminal law ⇨64(3)

The statutory requirement that, before a defendant who has no attorney can agree to waive a jury, the court must appoint an attorney to represent him, is mandatory. Vernon's Ann.C.C.P. art. 10a.

5. Criminal law ⇨982

The statutory requirement that when defendant has no counsel, the court must inform defendant of his right to make application for suspended sentence, and shall appoint counsel to prepare and present the same, if requested by defendant, is mandatory. Vernon's Ann.C.C.P. art. 776a.