

STATE OF MAINE

v.

KIM SREY

Submitted on Briefs December 11, 2007  
Decided January 10, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD, and  
GORMAN, JJ.

MEMORANDUM OF DECISION

Kim Srey appeals from a sentence entered in the District Court (Portland, *O'Neil, J.*) finding him guilty of operating while license suspended, 29-A M.R.S. § 2412-A(1-A)(B) (2006), and sentencing him to seven days in the county jail, a one-year license suspension, and a fine of \$600. Srey does not challenge his conviction, arguing only that he should not have been sentenced to the statutory minimum mandatory sentence provided in 29-A M.R.S. § 2412-A(3) (2006). Contrary to his argument, the minimum mandatory sentence applies to both administrative and judicial suspensions. 29-A M.R.S. § 2412-A(4)(C) (2006). Although he had taken steps to allow the Secretary of State to restore his

provisional license after only half of the suspension period had expired,<sup>1</sup> 29-A M.R.S. § 2472(6) (2006), it is clear that the Secretary of State had not restored his license at the time of the offense. Srey cannot now collaterally attack the Secretary of State's failure to immediately restore his license as a defense to the instant matter. *See State v. Holmes*, 2004 ME 155, ¶ 8, 864 A.2d 166, 168. As the original period of suspension of Srey's license had not expired by the date of the offense, this circumstance is distinguished from the requirements of 29-A M.R.S. § 2412-A(4)(C).<sup>2</sup>

The entry is:

Judgment affirmed.

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<sup>1</sup> Srey was operating under a provisional license at the time of the offenses and restoration of his driving privilege is governed by 29-A M.R.S. § 2472(6) (2006).

<sup>2</sup> The minimum mandatory sentences of subsection (3) apply only to the original period of suspension imposed by the court or the Secretary of State or as extended by the Secretary of State. 29-A M.R.S. § 2412-A(4)(C) (2006). The minimum mandatory sentences of subsection (3) do not apply to any extension of the original suspension imposed to compel a person's compliance with conditions for the restoration of a license or for failure to pay a reinstatement fee for a license. *Id.*