

STATE OF MAINE

v.

NATHAN DWYER

Submitted On Briefs February 25, 2010
Decided March 4, 2010

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Nathan Dwyer appeals a judgment of conviction for operating while license suspended or revoked (Class E), 29-A M.R.S. § 2412-A(1-A)(B) (2009), and violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2009), entered in the Unified Criminal Docket (Cumberland County, *Cole, J.*) following a bench trial.

Contrary to Dwyer's contention, he was not denied procedural due process when he was convicted of violating 29-A M.R.S. § 2412-A(1-A)(B) and subjected to an elevated minimum mandatory sentence without proof beyond a reasonable doubt that he had committed an underlying OUI offense. Dwyer was properly found to be subject to an elevated minimum mandatory sentence because the State proved his suspension was for "OUI or an OUI offense," which includes an administrative suspension for operating with an excessive blood-alcohol level. *See* 29-A M.R.S. §§ 2401(11), 2453(2), (3) (2009).

Dwyer's argument that he was denied procedural due process because an administrative determination was used as the basis for his criminal conviction is similarly unavailing. *See Powell v. Sec'y of State*, 614 A.2d 1303, 1307 (Me. 1982) (stating that certain procedural due process protections afforded to defendants in criminal proceedings are not provided in administrative proceedings because it "would unnecessarily complicate and burden" such proceedings); *see*

also Allen v. Illinois, 478 U.S. 364, 372 (1986) (refusing to provide a defendant with the “full panoply of [procedural] rights” in a civil, administrative hearing).

The entry is:

Judgment affirmed.

Attorney for Nathan Dwyer:

N. Seth Levy, Esq.
P.O. Box 15421
Portland, Maine 04112

Attorneys for the State:

Stephanie Anderson, District Attorney
Michael Madigan, Asst. Dist. Atty.
Prosecutorial District Two
142 Federal St.
Portland, Maine 04101