

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

COURT FILE NO: 70-VB-19-5703

ORDER TO VACATE

v.

John Thomas Myser, Jr.,
Defendant.

The above-entitled matter came on before Paula Duggan Vraa, Judge of District Court, at the Scott County Justice Center, Shakopee, Minnesota, on December 19, 2019, upon receipt a letter dated December 18, 2019, entitled "Notice to Correct Manifest Injustice." Michael Hayek, Assistant Scott County Attorney, represents the State. The defendant, John Thomas Myser, Jr., is not represented.


Having considered the file and the arguments of the parties, the Court hereby makes the following:

ORDER

1. The guilty plea, conviction, and fine entered on December 18, 2019 are VACATED.
2. This matter shall be set for a **petty misdemeanor court trial on January 22, 2020 at 1:00 p.m.** at the Scott County Justice Center, 200 Fourth Avenue West, Shakopee, Minnesota.
3. The attached memorandum is incorporated herein.

DATED: January 6, 2020

BY THE COURT:



Paula Duggan Vraa,
Judge of District Court

Filed in District Court
State of Minnesota

JAN 06 2020

MEMORANDUM

On April 2, 2019, the defendant was cited for misdemeanor driving after suspension in violation of Minnesota Statutes Section 171.24, subdivision 1. This alleged offense is on the Statewide Payables List with a fine of \$200.00, a general surcharge of \$75.00, and a locally imposed law library fee, which is \$13.00 in Scott County. On September 30, 2019, pursuant to Minnesota Rule of Criminal Procedure 23.04, and with approval of the Court, this offense was certified as a petty misdemeanor and set for a petty misdemeanor court trial on December 18, 2019.

When this case was called on December 18, 2019, a man came to counsel table and proceeded to identify himself. In identifying himself, he insisted on making meaningless distinctions between “John Thomas Myser, Jr.”, “the person John Thomas Myser, Jr.”, and “the identity of the person John Thomas Myser, Jr.” At the September 30, 2019 hearing, this same man attempted to identify himself as “John Myser... the attorney of record... appearing for and on behalf of the person John Myser, who is the defendant in this matter and... is not personally present.” This man was given multiple opportunities to properly confirm that he was the John Thomas Myser, Jr. identified in the citation. He refused to do so and, pursuant to Minnesota Rule of Criminal Procedure 23.05, subdivision 4, the Court entered a guilty plea and conviction and imposed the standard payable fine of \$288.00.

Minnesota Rule of Criminal Procedure 23.05, subdivision 5 allows a defendant convicted of a petty misdemeanor after a failure to appear to move to vacate the conviction. Minnesota Rule of Criminal Procedure 23.05, subdivision 4 delays final entry of failure to appear convictions for 10 days to allow for appropriate requests to vacate. Defendant filed his “Notice to Correct Manifest Injustice” within 10 days of the

December 18 conviction. The Court interprets the “Notice to Correct Manifest Injustice” as a proper request to vacate under Minnesota Rule of Criminal Procedure 23.05, subdivision 5. The “Notice to Correct Manifest Injustice” signed by John Myser indicates that “I was there” and “I was appearing as the Defendant as required” with respect to the December 18, 2019, petty misdemeanor court trial. It further acknowledges that many court personnel that have been at hearings with John Thomas Myser, Jr. in the past recognized the man at counsel table as John Thomas Myser, Jr. This letter sufficiently establishes that the defendant was present at the hearing on December 18, 2019. It is therefore appropriate to vacate the guilty plea, conviction, and fine entered on that date and reset this matter for another petty misdemeanor court trial.

At the trial, the issues to be demined will be whether:

- (1) the person's driver's license or driving privilege [was] suspended;
- (2) the person ha[d] been given notice of or reasonably should [have] know[n] of the suspension; and
- (3) the person disobey[ed] the order by operating in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is suspended, and
- (4) the person's acts took place on April 2, 2019 in Scott County, Minnesota.

Minn. Stat. § 171.24, subd. 1. In this context, “the person” means the defendant John Thomas Myser, Jr., who was cited for driving after suspension on April 2, 2019. The defendant John Thomas Myser, Jr. could be identified by the officer who issued the citation, if her testimony is credible. The Court will allow Defendant to make a brief record of his legal theories to preserve them for potential appeal, but will otherwise limit the trial to relevant legal issues and legitimate arguments.

-PDV