

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Christopher William Platt, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 South Carolina Department of )  
 Motor Vehicles, )  
 )  
 Respondent. )  
 )

Docket Number: 12-ALJ-21-0454

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ORDER

SC Court of Appeals

This matter is before the Administrative Law Court (ALC or Court) on a Notice of Appeal filed by Christopher William Platt (Appellant) from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (OMVH) dated October 8, 2012. The Appellant argues that the OMVH Hearing Officer erred in sustaining the Department of Motor Vehicles' (Department) determination that Appellant is a habitual offender as defined in S.C. Code Ann. § 56-1-1020 (2006). This determination resulted in the suspension of Appellant's driver's license for a five-year period. The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 1-23-660 (Supp. 2012). After careful consideration of the briefs and the record on appeal, the OMVH Hearing Officer's decision is affirmed.

FACTS

On February 27, 2009, Appellant was charged with Reckless Driving and was convicted of that offense on March 23, 2009. Subsequently, the Appellant was again charged with Reckless Driving on December 25, 2009, and he was convicted of that offense on November 18, 2011. After the second conviction for Reckless Driving was entered upon the Department's records, the Department sent the Appellant a letter, dated December 1, 2011, advising him that he was in danger of being declared a habitual offender. The letter stated in pertinent part:

This is to advise you of your present standing under the Habitual Offender law. This law states that any person who is convicted of three major violations. . . within a three year period will be classified as a Habitual Offender. Our records now reveal that you have accumulated 02 major and 02 minor violations. Should you be convicted of any additional major or minor violations which would

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classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

The letter went on to list the offenses which would classify a driver as a habitual offender, and advised: "[W]e earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina."

On August 13, 2011, the Appellant committed the offense of Driving with Unlawful Alcohol Concentration (DUAC). He was convicted of this offense on April 20, 2012. The Department then sent the Appellant an Official Notice, dated May 21, 2012, that as a result of the three convictions he was declared a Habitual Offender and his driver's license was suspended from June 20, 2012 until June 20, 2017. The Notice further advised the Appellant of his right to review of the determination by the OMVH.

On June 8, 2012, the Appellant requested an administrative hearing challenging the habitual offender declaration and the suspension of his driving privileges. After notice was sent to all parties, a hearing was held on (date), before OMVH Hearing Officer Brigitte Autry. On October 8, 2012, the Hearing Officer issued a Final Order and Decision sustaining the Department's determination and the suspension of the Appellant's driving privileges. The Appellant filed this appeal with the ALC on October 19, 2012.

### ISSUE ON APPEAL

Whether the OMVH hearing officer erred in not concluding that the Department should be equitably estopped from declaring the Appellant to be a Habitual Offender?

### STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660 (Supp. 2011). The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2011). The OMVH is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2) (Supp. 2011). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380 (Supp. 2011); see also *Bverly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995).

Section 1-23-380(5) provides the standard for appellate bodies, including the ALC in this matter, to use when reviewing agency decisions:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2012).

On review of the facts or orders of administrative agencies, the court will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. Public Administrative Law and Procedure § 220(a) (1983). Therefore, the burden is on the Appellant to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. Hamm v. S.C. Pub. Serv. Comm'n. 294 S.C. 320, 364 S.E.2d 455 (1988).

### DISCUSSION

South Carolina law defines a habitual offender as “any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a) (b) and (c) committed during a three year period. . . .” S.C. Code Ann. § 56-1-1020 (2006) (emphasis added). In order to be declared a habitual offender, a person must have accumulated convictions for three or more separate and distinct major offenses, or ten or more separate and distinct minor offenses, committed within the three year period. Id. Major offenses include reckless driving and operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs. § 56-1-1020(a)(2) and (3).<sup>1</sup> A motorist is deemed to have been

<sup>1</sup> A conviction for Driving with Unlawful Alcohol Concentration (DUAC) constitutes a conviction for operating a motor vehicle “while under the influence of intoxicating liquors, narcotics or drugs” under Section 56-1-1020(a)(2). S.C. Dep't of Motor Vehicles v. Blackwell, 389 S.C. 293, 698 S.E.2d 770 (2010).

convicted of an offense on the date the offense was committed if he is subsequently convicted of committing the offense. § 56-1-1020(d).

Furthermore, when a motorist is convicted of one or more of the offenses listed in § 56-1-1020, the Department must review the motorist's driving record, and if the record reveals that the person is a habitual offender, the Department must revoke or suspend the person's driver's license for a five-year period. S.C. Code Ann. §§ 56-1-1030, 56-1-1090 (Supp. 2012).

In this case, the Appellant does not dispute that his driving record, as maintained by the Department, reflects convictions for three separate and distinct offenses which were committed during a three year period: Reckless Driving, committed on February 27, 2009; another conviction for Reckless Driving, committed on December 25, 2009; and DUAC, committed on August 13, 2011. Thus, pursuant to Section 56-1-1020, he meets the definition of a habitual offender.<sup>2</sup>

Nevertheless, the Appellant contends that the Hearing Officer erred in not concluding that the Department should be estopped from declaring him a Habitual Offender and suspending his driving privileges. The Appellant asserts that the Department misrepresented the law to him in its December 1, 2011 letter, in which it notified him that he was in danger of being classified as a Habitual Offender. Specifically, the Appellant argues that the letter did not contain any reference to Section 56-1-1020(d), but merely stated that a third conviction within three years would result in a Habitual Offender declaration. He further states that the letter misled him into believing his conviction for DUAC would not result in his being declared a Habitual Offender. Based upon this misapprehension, the Appellant decided not to contest the DUAC charge. The court finds the Appellant's estoppels argument to be without merit.

First, the doctrine of equitable estoppel does not apply against a government entity when the matters involved affect the exercise of the government's police power or the application of public policy. S.C. Dep't of Social Servs. v. Parker, 275 S.C. 176, 268 S.E.2d 282 (1980); Morgan v. S.C. Budget and Control Bd., 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008). The General Assembly has clearly stated the public policy of the State with regard to habitual traffic offenders as follows:

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<sup>2</sup> Although the date of Appellant's conviction for DUAC (April 20, 2012) was more than three years after the date of his first offense and conviction for Reckless Driving, the offense was committed during the three year period. Therefore, pursuant to Section 56-1-1020(d), the DUAC conviction is properly counted as one of the three major convictions necessary for Appellant to be declared a Habitual Offender.

It is hereby declared to be the policy of this State:

(a) To provide maximum safety for all persons who use the public highways of this State; and

(b) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this State; and

(c) To discourage repetition of unlawful acts by individuals against the peace and dignity of this State and her political subdivisions and to impose additional penalties upon habitual offenders who have been convicted repeatedly of violations of the traffic laws of this State.

S.C. Code Ann. §56-1-1010 (2006). In this case, the Appellant does not dispute that he accumulated the requisite convictions to support the Department's determination to classify him as a habitual offender. Thus, it is the policy of the State to safeguard the public by denying the Appellant the privilege of driving a motor vehicle. This case clearly involves the exercise of the State's police power and the application of public policy.<sup>3</sup> Accordingly, the doctrine of equitable estoppel is inapplicable.

Moreover, even if the application of equitable estoppel were appropriate in this instance, the Appellant has failed to establish all of the necessary elements. To prove estoppel against the government, the relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229, 232 (2001) (citing Midlands Utility, Inc. v. S.C. Dep't of Health and Env'tl. Control, 298 S.C. 66, 378 S.E.2d 256 (1989)). In this case, the court finds that the Appellant's argument fails to satisfy either of the first two elements.

With respect to the first element, lack of knowledge and the means of knowledge of the truth, the Appellant states that he was unaware of Section 56-1-1020(d) and did not know his third conviction, which took place more than three years from the date of his first offense, would result in a habitual offender declaration. However, all citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests. Aherne v. State, 392 S.C.

<sup>3</sup> Cf. Sponar v. S.C. Dep't of Public Safety, 361 S.C. 35, 603 S.E.2d 412 (Ct. App. 2004) (license to operate a motor vehicle is a mere privilege subject to reasonable regulations under the state's police power in the interest of public safety and welfare); S.C. Dep't of Motor Vehicles v. Nelson, 364 S.C. 514, 613 S.E.2d 544 (Ct. App. 2005) (implied consent laws are driven by public policy considerations of maintaining safe highways and roads).

340, 709 S.E.2d 54 (2011); Morgan v. S.C. Budget and Control Bd., 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008); American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (Ct. App. 2009). The statutes of South Carolina are publicly accessible. Therefore, the Appellant was charged with knowledge of the law and had the "means of knowledge" to determine the law applicable to habitual offenders, including the provisions of Section 56-1-1020(d).<sup>4</sup> See Quail Hill, LLC v. County of Richland, 387 S.C. 223, 692 S.E.2d 499 (2010) (since zoning classifications were available to the public, developer had the means of knowledge to determine the correct classification and could not rely solely on information provided by county staff members).

Furthermore, the court finds that any reliance the Appellant placed upon the letter sent by the Department was not justifiable. Pursuant to S.C. Code Ann. § 56-1-1130, the Department is required to "send a written notice to any person who it determines is in danger of becoming an habitual offender." The purpose of the Department's letter of December 1, 2011, issued in accordance with this statutory mandate, was not to provide the Appellant with legal advice, but merely to warn him that he was in danger of being declared a Habitual Offender and to implore him to improve his driving habits. Importantly, the receipt of this notice is not even a prerequisite to a Habitual Offender declaration. Wilkins v. Taylor, 268 S.C. 371, 234 S.E.2d 212 (1977) (dealing with a predecessor statute identical to Section 56-1-1130). Once the Appellant received the notice, it was incumbent upon him to exercise reasonable care to protect his interests by making himself aware of the applicable law and by changing his driving habits so as not to commit any additional offenses. Morgan, supra. The court cannot accept the Appellant's assertions that the Department's letter misrepresents the law simply because it does not cite to the relevant statutes. The Department's letter does not purport to contain a complete recitation of the Habitual Offender statutes, but merely to notify the Appellant of the status of his driving record. Even if the Department's letter had contained a misrepresentation of the law, it is well settled that the government cannot be estopped where a government employee gives erroneous information that contradicts the law. See, e.g., Quail Hill, 387 S.C. at 236, 692 S.E.2d at 506; Morgan, 377 S.C. at 319, 659 S.E.2d at 267. Finally, since Appellant had the means of knowledge to determine the provisions of the Habitual Offender statutes, he could not justifiably

<sup>4</sup> The Appellant argues in his brief that Section 56-1-1020(d) is an "obscure provision of law" and that even attorneys have difficulty interpreting it. However, there is nothing in the case law of South Carolina which exempts obscure provisions of law from the general doctrine that citizens are presumed to know the law.

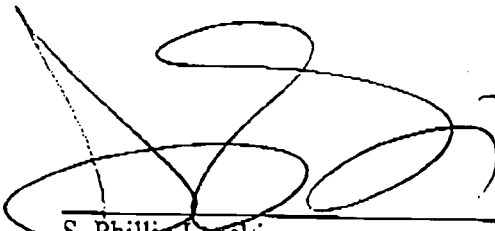
rely solely on the information provided by the Department. Quail Hill, 387 S.C. at 239, 692 S.E.2d at 507-08.<sup>5</sup>

For the foregoing reasons, this court finds the OMVH Hearing Officer properly concluded that the Appellant is a Habitual Offender and correctly sustained the suspension of his driving privileges.

**ORDER**

Therefore, **IT IS HEREBY ORDERED** that the Hearing Officer's Final Order and Decision is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
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S. Phillip Lenski  
Administrative Law Judge

November W, 2013  
Columbia, South Carolina

<sup>5</sup> Appellant also makes the assertion in his brief that the Department's conduct violated his right to due process under the South Carolina and United States Constitutions. However, this assertion is conclusory and unsupported by any legal argument. Therefore, this argument is abandoned. See First Savings Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994); D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 730 S.E.2d 340 (Ct. App. 2012) (conclusory statements made without supporting authority are deemed abandoned on appeal).

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Leah E. Garland  
Judicial Law Clerk

November 8, 2013  
Columbia, South Carolina

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