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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Robert L. Reibold, Administrative Law Judge

Case No. 2026 - 001680

Darryl R. Kinloch . . . . . Appellant,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety . . . . . Respondents.

INITIAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

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STATEMENT OF THE ISSUES ON APPEAL

1. **THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT PROPERLY REJECTED APPELLANT'S EQUITABLE TOLLING ARGUMENT AND UPHELD THE OFFICE OF MOTOR VEHICLES' DISSMISSAL OF APPELLANT'S CONTESTED HEARING REQUEST AS UNTIMELY.**

2. **THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THE OMVH'S DISMISSAL OF APPELLANT'S CONTESTED CASE WITHOUT A HEARING WAS NOT IN ERROR.**

3. **THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THE APPELLANT'S ARGUMENTS CONCERNING THE UNDERLYING MERITS OF HIS CHALLENGE OF THE NOTICE OF SUSPENSION WERE NOT PROPERLY BEFORE THE COURT.**

4. **THE APPELLANT FAILS TO PARTICULARLY IDENTIFY ANY ACTUAL ERROR OF LAW UPON WHICH RELIEF CAN BE GRANTED.**

STATEMENT OF THE CASE

On August 3, 2024, Trooper Daniel R. Coon stopped Appellant Kinloch for speeding at 106 mph in a 60 mph zone. (R. p. 36). Upon making contact with the driver (Appellant), Appellant provided Trooper Coon with a driver's license bearing the name of Darryl Kinloch. (R. p. 36). Trooper Coon noticed that Appellant's movements were slow and sluggish, his eyes were glassy and bloodshot, and Trooper Coon could smell a strong odor of alcoholic beverage emeitting from his person. (R. p. 36).

Trooper Coon asked Appellant to perform field sobriety tests, including all three of the standardized field sobriety tests. (R. p. 37). These field sobriety tests were the horizontal gaze nystagmus test, the walk and turn test, and the one leg stand test. (R. p. 37). The Appellant performed poorly on all three tests. Trooper Coon transported Appellant to the Beaufort County detention center where he discovered a white powdery substance on Appellant upon arrival. (R. p. 38). Appellant was arrested on August 3, 2024 at approximately 3:07 a.m. for an offense arising

out of an act alleged to have been committed while he was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. (R. p.38).

After his transport to the Beaufort County Detention Center, Appellant submitted to a breath test and provided a sample of 0.07% at 10:18 p.m. (R. p. 38). Trooper Coon then requested Appellant submit to a urine test. (R. p. 38). Appellant refused to submit to a urine test and, as a result, was found to be in violation of South Carolina Code of Laws Section 56-5-2950 (2014). (R. p. 23). Thus, Trooper Coon issued a Notice of Suspension form to Appellant pursuant to South Carolina Code of Laws Section 56-5-2951 (2014). (R. p. 23).

Appellant did not request a contested case hearing in a timely manner. The Notice of Suspension was issued August 4, 2024, however, Appellant did not file his request for a hearing with the Office of Motor Vehicle Hearings (OMVH) until October 14, 2025, a year beyond the thirty-day time limit. (R. p. 7). On June 17, 2025, Respondent South Carolina Department of Motor Vehicles (SCDMV) filed a Motion to Dismiss asserting the OMVH lacked jurisdiction to consider this matter because Appellant failed to timely file his request for a contested case hearing. (R. p. 7). The OMVH granted SCDMV's Motion to Dismiss on October 21, 2025. (R. p. 8).

On October 27, 2025, Appellant filed a Motion to Reconsider which the OMVH denied on November 5, 2025. (R. p. 15-16). Appellant appealed the OMVH decisions to the South Carolina Administrative Law Court (ALC) which upheld the OMVH's dismissal in a Final Order and Decision, dated June 10, 2026. On or about, June 16, 2026, Appellant filed a Motion for Reconsideration or to Alter or Amend Final Order. The ALC denied Appellant's Motion for Reconsideration or to Alter or Amend Final Order in its Order Denying Petition for Rehearing, dated July 7, 2026.

STANDARD OF REVIEW

The scope of judicial review in this case is limited by the South Carolina Administrative Procedures Act by South Carolina Code of Laws Section 1-23-380 (2026). In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981), the South Carolina Supreme Court set out the standard of evidentiary review under the Administrative Procedure Act:

> [Section 1-23-380(5)(a)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.
>
> We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

> The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

See also *Schudel v. South Carolina Alcoholic Beverage Control Commission*, 276 S.C. 138, 276 S.E.2d 308 (1981*); Fast Stops, Inc. v. Ingram,* 276 S.C. 593, 281 S.E.2d 18 (1981).

An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc.*, *supra*. In *Lark*, our Supreme Court quoted *Consolo v. Federal Maritime Commission*, 383 U.S. 611, 16 L.Ed.2d 131, 86 S.Ct. 1118 (1966), to define substantial evidence:

> We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."... "It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury..." This is something less than the weight of the evidence, and the possibility of drawing two inconsistent

> conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark, 276 S.C. at 136, 276 S.E.2d at 311. *See*, *also*, *Dorman v. DHEC*, 565 S.E.2d 119, 350 S.C. 159 (Ct. App. 2002); *Hamm v. South Carolina Public Service Commission and Wild Dunes Utilities, Inc.*, 311 S.C. 295, 422 S.E.2d 118 (1992).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC*, *supra*; *Hamm v. American Telephone & Telegraph Co.*, *supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts 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* Section 220(a) (1983). Therefore, the burden is on the Petitioner 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. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENT

1. THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT PROPERLY REJECTED APPELLANT'S EQUITABLE TOLLING ARGUMENT AND UPHELD THE OFFICE OF MOTOR VEHICLES' DISSMISSAL OF APPELLANT'S CONTESTED HEARING REQUEST AS UNTIMELY.

South Carolina law allows for equitable tolling to suspend a limitations period, but only in limited circumstances where the party seeking tolling can establish a compelling basis for

awarding such relief. *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 SE2d 29 (2009). The ALC properly recognized "equitable tolling may only be applied where it is justified under all circumstances; however, it should be used sparingly and only when the interests of justice compel its use." *Id*. The Appellant has failed to present a compelling basis for tolling his deadline and excusing his failure to timely file for a contested hearing with the OMVH, and the OMVH and ALC properly rejected his request for relief.

The Appellant's own submissions into the record of this case clearly confirm that he received his Notice of Suspension and was informed on the Notice that he must appeal the suspension within thirty days of the issuance of the Notice to the OMVH pursuant to S.C. Code Ann. § 56-5-2951. (R. p. 7, 31-41, 46-66). First, the failure to follow simple directions and the law cannot be excused by the Appellant contacting the wrong agency. "[C]itizens are presumed to know the law and are charged with exercising 'reasonable care to protect [their] interest[s].'" *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (citing *Smothers v. U.S. Fidelity and Guar. Co.,* 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct.App.1996)).

Second, the only documents in the record attempting to establish communication between Appellant and SCDPS are from October of 2025 a year beyond the deadline for filing with the OMVH. (R. pp. 15-17, 27-30). Therefore, even if Appellant's illogical argument that contact with the arresting agency should create an equitable tolling were accepted, said contact occurred an entire year after the deadline for filing an appeal.

The Appellants Initial Brief redundantly argues the legibility of the Notice of Suspension he acknowledges receiving and alleged inconsistencies of the Notice of Suspension, Data Master Report, and subsequent SCDMV notice letter are sufficient grounds to establish his tolling claim.

Appellant seems to suggest OMVH and ALC incorrectly framed that argument as applying to the merits and did not consider them in regard to his tolling claim. The Appellant's characterization of the OMVH and ALC's reviews and rulings is not only wrong, but it also gravely fails to present a compelling basis for relief. The clear facts of this case show the Appellant received a Notice of Suspension with type-written instructions for how to request a contested hearing and the timeframe for which the hearing must be requested or else the right to a hearing would be waived.

Equitable tolling is only available where a party is misinformed, misguided, or otherwise delayed for reasons outside of his control. See *Hooper*. Here, Appellant contends his extreme tardiness should be excused, and he should be entitled to equitable tolling relief because he contacted the South Carolina Department of Public Safety (SCDPS) rather than the OMVH – the Office the typewritten language on the Notice told his to contact. Appellant has failed to present a compelling basis for tolling and the ALC properly upheld the OMVH's rejection of that argument.

2. <u>THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THE OMVH'S DISMISSAL OF APPELLANT'S CONTESTED CASE WITHOUT A HEARING WAS NOT IN ERROR.</u>

South Carolina Code of Laws Section 56-5-2951(A) (2024) unambiguously mandates SCDMV to suspend the driver's license of a person who drives a motor vehicle and refuses to submit to a test provided for in South Carolina Code of Laws Section 56-5-2950 (2014) and requires the arresting officer to issue a notice of suspension which is effective beginning on the date of the alleged violation. Section 56-5-2951(B)(1)(a) allows a person to request a contested case hearing before the Office of Motor Vehicle Hearings within thirty days of the issuance of the notice of suspension. Section 56-5-2951(D) expressly states "[i]f a person does not request a contested case hearing, the person waives the person's right to the hearing …." The ALC's June

10, 2026, Order wisely recognized the absolute, mandatory nature of Section 56-5-2951(D) and upheld the OMVH's dismissal of Appellant's contested case hearing.

Section 56-5-2951 establishes the OMVH's jurisdiction and provides the only avenue by which a person can seek judicial review of a notice of suspension issued under South Carolina's implied consent laws. When a person fails to comply with Section 56-5-2951, the OMVH and its reviewing courts lack jurisdiction to even consider the matter, and the request must be denied without a hearing. *Wingate v. South Carolina State Highway Dep't*, 276 S.C. 39, 274 S.E.2d 917 (1981). Appellant has not asserted the OMVH or ALC misconstrued or misapplied Section 56-5-2951 by dismissing his contested case hearing, but he argues at length that the dismissal should not have occurred without some evidentiary findings concerning the legibility, authenticity, and reliability of the Notice of Suspension he received. Appellant's attempt to challenge the OMVH's dismissal for failure to allow an evidentiary hearing ignores Section 56-5-2951's most critical role in establishing subject matter jurisdiction and is catastrophically flawed. The Appellant's own delay deprived the OMVH of its authority to even consider his concerns with the legibility, authenticity, and reliability of the Notice of Suspension. The OMVH lacked subject matter jurisdiction and no other choice than to dismiss Appellant's contested case without a hearing. Likewise, the ALC had and this Court has no other choice than to uphold the dismissal because *Wingate* firmly establishes that appellate review is not available where subject matter jurisdiction is lacking.

3. <u>THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THE APPELLANT'S ARGUMENTS CONCERNING THE UNDERLYING MERITS OF HIS CHALLENGE OF THE NOTICE OF SUSPENSION WERE NOT PROPERLY BEFORE THE COURT</u>.

The ALC's correctly determined that Appellant's arguments concerning the underlying merits of his challenge of the Notice of Suspension were not properly before the Court because the

OMVH and the ALC lacked subject matter jurisdiction to hear those arguments. See *Wingate, supra*. Furthermore, the Appellant's brief expounds on his concerns with the legibility, authenticity, and reliability of the Notice of Suspension he acknowledges receiving and alleged inconsistencies of the Notice of Suspension, Data Master Report, and subsequent SCDMV notice letter, but in addition to the lack of subject matter jurisdiction which Appellant cannot overcome, those arguments were raised for the first time in his Request for Reconsideration to the OMVH and, therefore, are not preserved for review in this appeal even if the Court did have jurisdiction. See *Dixon v. Dixon*, 362 S.C. 388, 608 SE2d 849 (2005).

4. <u>THE APPELLANT FAILS TO PARTICULARLY IDENTIFY ANY ACTUAL ERROR OF LAW UPON WHICH RELIEF CAN BE GRANTED.</u>

Under South Carolina law, the Appellant bears the burden of establishing his entitlement to relief in this matter. See *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 225 (1996). The South Carolina Supreme Court has applied that burden specifically in reviewing whether the burden remained with a party appealing an ALC decision. See *Sierra Club v. S.C. Dep't of Health & Envtl. Control*, 426 S.C. 236, 257, 826 SE2d 595 (2019). South Carolina further mandates that "every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point [that] it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Forest Dunes Assoc. v. Club Carib, Inc.*, 301 S.C. 87, 390 SE2d 368 (1990) (quoting *Winter v. U.S. Fidelity & Guaranty Co.*, 240 S.C. 561, 568, 126 S.E.2d 724, 727 (1962).

Appellant's brief is a redundant, elongated, and confusingly written regurgitation of his previous filings on appeal. The Appellate complains of the ALC's treatment of his arguments but completely fails to point to or identify an actual error of law. The most generous reading of Appellant's brief reveals that his entire appeal is centered on the singular theme that the legibility

of the handwritten information on the Notice of Suspension he admits receiving should excuse him from following the hearing request process set out in the clearly legible typewritten text. Nowhere in this case does the Appellate refute the fact that he received actual Notice of Suspension and the typewritten procedure for requesting a contested hearing before the OMVH. Instead, the Appellant is asking the court to grant him undeserved relief because he allegedly chose to seek assistance from a state agency that is different from the office he was instructed to seek assistance from.

As discussed above, the Appellants arguments concerning the legibility of the Notice of Suspension is not a sufficient basis for relief in this case. The Appellant has not carried his burden of establishing grounds upon which his appeal can be granted, and his appeal should be denied.

CONCLUSION

For the reasons set forth above, the order of the administrative law judge sustaining the order of the OMVH hearing officer should be affirmed in its entirety.

Respectfully submitted,

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