

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2014-000340

Lisa Soto,

Appellant,

v.

South Carolina Department of Motor Vehicles and South Carolina Department of
Public Safety,

Respondents.

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BRIEF OF APPELLANT

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

1. Does the exception set forth in South Carolina Code §56-1-1020(a)(4), excepting a Driving Under Suspension violation for failure to file proof of financial responsibility from those violations establishing a Habitual Offender declaration, include a suspension for a Cancellation of Insurance?

STATEMENT OF THE CASE

In correspondence dated January 10, 2013, Appellant received an Official Notice of Suspension from the South Carolina Department of Motor Vehicles stating that she had been declared a Habitual Offender for accumulating three major traffic violations within a three (3) year period. Those violations were indicated as follows:

Driving Under Suspension (violation date 10/9/2010);

Driving Under Suspension (violation date 2/5/2011); and

Driving with an Unlawful Alcohol Concentration (violation date 9/1/2011)

On February 6, 2013, Appellant, through counsel, requested a hearing challenging the Appellant's declaration of Habitual Offender status, based on the first of those violations (Driving Under Suspension on 10/9/2010) being for Appellant driving after being suspended for her insurance being cancelled and not having proof filed of financial responsibility.

On Monday, May 6, 2013, the Honorable Phillip T. Addington, Senior Hearing Officer for the Office of Motor Vehicle Hearings, conducted the contested hearing. Present on behalf of the Appellant were her counsel, Daniel J. Farnsworth, Jr. and Chris W. Edwards, both of the Greenville County Bar. No one was present for the Department of Motor Vehicles.

During a pretrial conference, counsel and the Hearing Officer discussed the statute at issue and counsel was advised by the Hearing Officer that it has been the Department of Motor Vehicles' position that 'failure to file proof of financial responsibility' under South Carolina Code §56-1-1020(a)(4), was limited to those violations regarding Form SR-22 requirements, and did not include a suspension for cancellation of insurance. Appellant argued that the statute in question included no such limiting language singling out SR-22 violations, and if that had been the intention of the legislature, there would have been limiting language to that effect in the statute. Appellant further noted that in addition to the lack of any limiting language in the statute, there had been no authority presented for the position of the Department of Motor Vehicles that would distinguish Appellant's having her insurance cancelled from a duty to provide proof of financial responsibility as provided in the statutory exception.

During the Hearing, Appellant's driving record was entered into the record. Such record indicated that Appellant's driving privilege had been suspended on September 23, 2010, just over two weeks prior to her October 9, 2010 citation for Driving Under Suspension. Counsel for Appellant again asserted that Appellant's suspension for Cancellation of Insurance fell squarely within the exception set out in South Carolina Code §56-1-1020(a)(4) that excluded a suspension for Failure to File Proof of Financial Responsibility from those violations that established a Habitual Offender declaration. Appellant argued that such suspension was due to her failure to have proof of financial responsibility timely filed after her insurance had lapsed, for which the above referenced statutory exception plainly provided. Appellant further reasoned that with the primary way to show proof of financial responsibility being one's obtaining motor vehicle liability insurance coverage, after which the carrier would submit a certificate of

insurance under South Carolina Code §56-1-1020(a)(4), that the act of obtaining a replacement policy after a change in carrier or lapse in coverage would be providing proof of financial responsibility.

On May 13, 2013, Senior OMVH Hearing Officer Addington entered a Final Order and Decision concluding that a suspension for cancellation of insurance “is not the same as a suspension for failure to file proof of financial responsibility”. And further, that Appellant’s suspension was not issued due to her failure to file proof of financial responsibility within the meaning of South Carolina Code §56-1-1020(a)(4).

On May 31, 2013, Appellant filed a Notice of Appeal to the South Carolina Administrative Court and served all parties.

On January 30, 2014, the Honorable Shirley C. Robinson, without a hearing, filed her decision affirming the Order and Decision by the Department of Motor Vehicle Hearings. Judge Robinson distinguished a driver’s license suspension for cancellation of insurance from a suspension for failure to comply with the requirements to verify proof of financial responsibility. Further, the Administrative Law Court’s ruling also attempted to distinguish support cited by the Appellant, South Carolina Department of Motor Vehicles v. Carter, 06-ALJ-21-0875-AP, from the instant case. In Carter, however, the driver’s suspension resulted solely from insurance being cancelled, just as in the instant case.

It is from this decision that Appellant now appeals to the South Carolina Court of Appeals.

ARGUMENT

THE ADMINISTRATIVE LAW COURT ERRED IN RULING THAT A CANCELLATION OF INSURANCE DID NOT FALL UNDER THE EXCEPTION TO THE HABITUAL OFFENDER DESIGNATION SET OUT UNDER SOUTH CAROLINA CODE ANNOTATED § 56-1-1020(a)(4).

The South Carolina statute defining a Habitual Offender provides that:

A habitual offender shall mean 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; provided, that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purpose of the article as one offense: [a] Three or more convictions, singularly or in combination of any of the following separate and distinct offenses arising out of separate acts: ... (4) Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked, *except a conviction for driving under suspension for failure to file proof of financial responsibility*; ... SC Code Ann. § 56-1-1020

The Administrative Law Court's distinction between a driver's license suspension for cancellation of insurance and one's failure to provide proof of financial responsibility is without legal significance. South Carolina Code of Laws Annotated § 56-10-240, which provides a suspension for cancellation of insurance, refers to a driver's duty to meet financial responsibility requirements, which is not distinguishable from the duty to file proof of financial responsibility contemplated in the exception to the Habitual Offender designation.

The requirements to verify proof of financial responsibility are satisfied primarily by one obtaining a replacement policy of motor vehicle liability insurance, which triggers having a Certificate of Insurance filed by the Carrier pursuant to §56-9-550.

“Proof of financial responsibility may be furnished by filing with the Department of Motor Vehicles the written certificate or notice by magnetic or electronic media in a manner satisfactory to the department of any insurance carrier authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility.” SC Code Ann. §56-9-550. Appellant would submit that the very act of obtaining coverage acts to show proof of financial responsibility since obtaining coverage, whether by depositing cash or some other form of payment, triggers automatic proof being made by the carrier pursuant to §56-9-550.

Although a suspension for failure to timely obtain replacement coverage after a policy cancellation may be a valid suspension, that carries with it penalties for driving under suspension, driving while under such a suspension is not a violation to be included in a designation of habitual offender pursuant to the specific exception of §56-1-1020(a)(4).

Appellant would submit that failure to show proof of automobile financial responsibility is virtually the same as obtaining personal liability coverage. When one obtains motor vehicle liability insurance, what is filed with the Department of Motor Vehicles is proof that such coverage was put in place, and such filing is referred to in the South Carolina Code as filing “proof of financial responsibility.” Put another way, obtaining liability coverage for one’s vehicle is the very same thing as “filing proof of

financial responsibility.” Therefore, having one’s insurance lapse or cancelled would, for all intents and purposes, be a failure to maintain proof of financial responsibility.

In the present case, the Hearing Officer concluded that Appellant’s driving under suspension at issue was not the same as a suspension for failure to file proof of financial responsibility within the meaning of §56-1-1020(a)(4), and did not remove her from “habitual offender” status under the statute. However, the South Carolina Administrative Law Court has previously ruled on this issue as recently as 2007. Judge Ralph King Anderson III, in his decision in SCDMV vs. Elena Alexandria Carter (06-ALJ-21-0875-AP) found that a conviction for Cancellation of Insurance does, in fact, fall under the exception set forth in §56-1-1020(a)(4).

The Financial Responsibility Act maintains primarily that drivers and registered owners of vehicles in the State of South Carolina are to obtain a motor vehicle liability insurance policy for the benefit of that driver or registered owner (or sufficient bond or cash deposit) and provide proof of such to the Department of Motor Vehicles. “Proof of Financial Responsibility” is defined in the Financial Responsibility Act as “proof of ability to respond to damages for liability...arising out of the ownership, maintenance, or use of a motor vehicle.” SC Code Ann. §56-9-20.

The Financial Responsibility Act requires proof of financial responsibility to be provided to the Department of Motor Vehicles. If a driver operates a vehicle on the public highways of this state when that proof is no longer current, whether a policy of motor vehicle liability insurance had been cancelled, or simply not obtained when that driver first registered a vehicle or became licensed, the resulting suspension would be for the general ‘failure to file proof of financial responsibility.’

The Administrative Law Court concurs with the Hearing Officer's Final Order and Decision, wherein he cites SC Code §56-9-540 in support of the Department's contention that the exception in §56-1-1020(a)(4) applies only to those violations of requirements of SR-22 and what the Department of Motor Vehicles labels "Future Proof of Financial Responsibility" on its Official Driving Records. (See Appellant's Driving Record pg. 2, 3, 4) If this reasoning would be given effect, the result would arguably treat those high-risk drivers required to obtain SR-22 coverage more favorably than other individuals who otherwise abide by the law but have their liability insurance cancelled due to a simple oversight of premium payments.

In his decision in Carter, Judge Anderson addresses this argument and finds that even in Chapter 9 of the Motor Vehicle Code, the law allows for "proof of financial responsibility" to be shown in ways other than by filing a Form SR-22. He further notes that certain sections of the Motor Vehicle Code use the term 'proof of financial responsibility' much more broadly than the Department of Motor Vehicles argues. In Carter, Judge Anderson correctly explains that both Chapter 9 and Chapter 10 of the Motor Vehicle Code require that "proof of financial responsibility" be given in certain situations. *Id. See, e.g.*, S.C. Code Ann. §56-10-510 (2006) (proof of financial responsibility must be furnished in the manner prescribed in §56-10-10, et seq.); S. C. Code Ann. §56-10-530 (2006) (proof of financial responsibility must be furnished in the manner prescribed in §56-9-350, et. seq.); S.C. Code Ann. §56-10-535 (2006) (proof of financial responsibility must be furnished in the manner prescribed by the director.)

Additionally, and perhaps most illuminating, in Carter, Judge Anderson concluded that for all intents and purposes, Carter's suspension for cancellation of

insurance was the same as being suspended for her failure to file proof of financial responsibility.

Carter provides further analysis on the “Applicability of Exception Set Forth in Section 56-1-1020(a)(4).” In Carter, as in the instant case, the driver was suspended for driving after having her insurance cancelled, which was found to be the equivalent of failing to maintain proof of financial responsibility with the South Carolina Department of Motor Vehicles. The Court found that Carter was *not* a "habitual offender" as the term is defined in S.C. Code Ann. §56-1-1020 (2006) by virtue of the suspension based solely on failure to provide proof of financial responsibility.

Lastly, the opinion of the Administrative Law Court attempts to distinguish Carter from the instant case, by noting that Carter provided testimony establishing that she had actually obtained another insurance policy from a different carrier prior to her violation date. Interestingly, and although not entered as testimony in the instant case, the Appellant had also obtained a replacement policy of liability insurance prior to the date of her violation for Driving Under Suspension. However, it appears that both the Appellant and Carter failed to present such evidence during the adjudication of their Driving Under Suspension charges, which could not be considered relevant to the analysis of this issue. The Administrative Law Court even recognized that Carter’s conviction for Driving Under Suspension was also due to a cancellation of insurance, the same as the Appellant herein.

In the present case, Appellant’s license was suspended from September 23, 2010 until October 11, 2010, a period of 19 days, after the cancellation of her insurance and until proof of financial responsibility was provided to the South Carolina Department of Motor Vehicles by her insurance carrier. Appellant, as in Carter, had actually obtained a

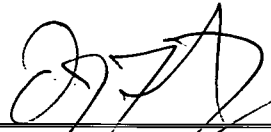
new policy of motor vehicle liability insurance on September 28, 2010, and prior to being cited for the Driving Under Suspension at issue in this appeal. It remains unclear why the carrier failed to submit a Certificate of Insurance upon the new policy being obtained and prior to the citation for Driving Under Suspension on October 9, 2010.

CONCLUSION

Appellant's declaration and accompanying suspension as a Habitual Offender should be rescinded. Appellant's suspension for her insurance being cancelled is equivalent to failing to maintain proof of financial responsibility. The Department of Motor Vehicles treatment of these two circumstances as mutually exclusive is legally insignificant. Appellant's Driving Under Suspension violation on October 9, 2010, was due to her driving a motor vehicle after failing to provide proof of financial responsibility. Operating a vehicle after having one's insurance cancelled and failing to provide proof of financial responsibility are one in the same.

Appellant respectfully requests that this Honorable Court overturn the decision of the Administrative Law Court, find that Appellant's driver's license suspension on October 9, 2010 for cancellation of insurance should fall within the exception listed in S.C. Code § 56-1-1020(a)(4), and that the Appellant's declaration as an Habitual Offender and subsequent suspension be rescinded.

[SIGNATURE ON NEXT PAGE]



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PROOF OF SERVICE

I certify that I served the Initial Brief of Appellant on the South Carolina
Administrative Law Court, the Office of Motor Vehicle Hearings and the South Carolina
Department of Public Safety General Counsel by depositing a copy of it in the United
States Mail, postage prepaid, on March 20, 2014, addressed to:

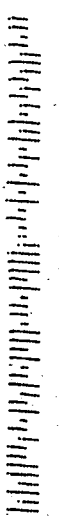
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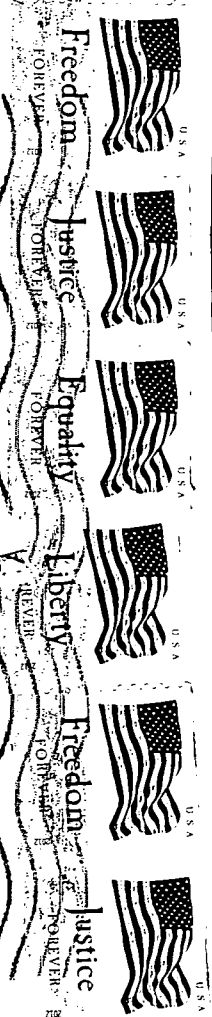

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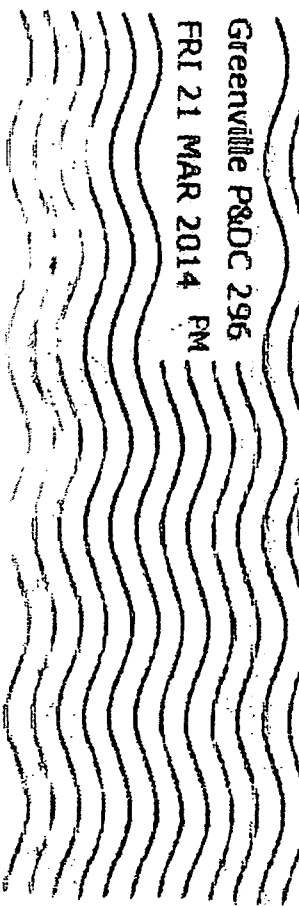


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