

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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.

INITIAL BRIEF OF THE RESPONDENTS

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SC Court of Appeals

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STATEMENT OF ISSUES PRESENTED

THE HEARING OFFICER DID NOT ERR IN FINDING THAT THE "DRIVING UNDER SUSPENSION" THAT THE APPELLANT RECEIVED ON OCTOBER 9, 2012 WAS NOT ISSUED DUE TO THE APPELLANT'S FAILURE TO FILE PROOF OF FINANCIAL RESPONSIBILITY WITHIN THE MEANING OF §56-1-1020 AND THEREFORE SUBJECT TO THE EXCEPTION TO A HABITUAL OFFENDER DECLARATION IN §56-1-1020(a)(4).

STATEMENT OF THE CASE

On October 9, 2010, Appellant was charged with driving under suspension, and she was convicted on November 11, 2010. This violation occurred when the Appellant was serving the mandatory suspension for cancellation of insurance. On February 5, 2011, Appellant was charged with driving under suspension and she was convicted on September 30, 2011. This violation occurred while Appellant was serving the mandatory suspension period for the driving under suspension violation of October 9, 2010. This was Appellant's second driving under suspension violation, and her driver's license was suspended from March 5, 2011 until June 2, 2012. On September 2, 2011, Appellant committed the offense of driving with an unlawful alcohol concentration ("DUAC"), and she was convicted on April 20, 2012. Based upon this violation, Appellant's driver's license was suspended from January 25, 2013 until July 25, 2013.

As a result of the three convictions, on January 10, 2013, the Department sent Appellant an official notice indication that, as a result of the three convictions, she was declared a Habitual Offender and her driver's license was suspended from February 9, 2013 until February 9, 2018. Appellant subsequently requested an administrative hearing to challenge the determination and suspension.

Pursuant to written notice to the parties, a hearing was held before OMVH Hearing Officer, Phil Addington on May 6, 2013. The DMV submitted documentation prior to the hearing which was made a part of the record pursuant to S.C. Code Ann. § 1-23-660(B).

A Final Order and Decision ("FOD") was issued on May 13, 2013, sustaining the suspension of the Respondent's driver's license. The FOD was served on the parties on May

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13, 2013. This appeal was timely filed in the Administrative Law Court on June 3, 2013. By Order dated January 30, 2014, the ALC ordered that the FOD sustaining the suspension of Appellant's driver's license or driving privilege be affirmed.

ARGUMENT

THE HEARING OFFICER DID NOT ERR IN FINDING THAT THE "DRIVING UNDER SUSPENSION" THAT THE APPELLANT RECEIVED ON OCTOBER 9, 2012 WAS NOT ISSUED DUE TO THE APPELLANT'S FAILURE TO FILE PROOF OF FINANCIAL RESPONSIBILITY WITHIN THE MEANING OF §56-1-1020 AND THEREFORE SUBJECT TO THE EXCEPTION TO A HABITUAL OFFENDER DECLARATION IN §56-1-1020(a)(4).

State 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 three or more separate and distinct major offenses or ten or more separate and distinct minor offenses committed within a three (3) year period. S. C. Code Ann. § 56-1-1020 (2006). The Appellant, according to her driving record, was charged with and convicted in three separate and distinct major traffic offenses committed within a three year period (ROA p 29- 33). The ROA shows that she was charged with DUAC on September 01, 2011 and convicted on December 18, 2012 and charged for driving under suspension on October 09, 2010 and February 05, 2011 and subsequently convicted of these charges on November 11, 2010 and September 30, 2011 (ALC ROA pp. 21-27). It is therefore, undisputed that the records as maintained by the Department of Motor Vehicles establishes a prima facie case and support the finding that the Appellant is a habitual offender as defined by the statute.

The Appellant asserts in her brief, as she did at the hearing in this matter, that the driving under suspension violation on October 09, 2010 should not be used as it falls under § 56-1-1020 (a) (4) which provides that a driving under suspension conviction cannot be used when the conviction for driving under suspension is for failure to file proof of financial responsibility. The Appellant asserts that her "failure to file such proof of financial responsibility prior to her traffic stop on October 9, 2010 was the reason that her license was suspended at the time she was stopped". However, she provided no evidence to establish this

and the Hearing Officer correctly found and concluded that the Appellant's "suspension was a result of the cancellation of insurance on August 12, 2010. She was suspended from September 23, 2010 until October 11, 2010 and this violation occurred while the Respondent was under the mandatory suspension period for cancellation of insurance. Therefore, the Hearing Officer concluded that the suspension that the Appellant received was not due to Appellant's failure to file proof of financial responsibility within the meaning of § 56-1-1020.

The Appellant's suspension for "cancellation of insurance" was pursuant to § 56-10-240 which provides, in pertinent part, that

...Upon receiving information to the effect that a policy is canceled or otherwise terminated on a motor vehicle registered in South Carolina, the department shall suspend the owner's driving privileges, license plate, and registration certificate and shall initiate action as required within fifteen days of the notice of cancellation to pick up the license plate and registration certificate. A person who has had his driving privileges, vehicle license plate, and registration certificate suspended by the department, but who at the time of suspension possesses liability insurance coverage sufficient to meet the financial responsibility requirements as set forth in this chapter, has the right to appeal the suspension immediately to the Director of the Department of Insurance. If the Director of the Department of Insurance determines that the person has sufficient liability insurance coverage, he shall notify the department and the suspension is voided immediately.

The Appellant admits that her insurance lapsed (ALC ROA p. 06) and was therefore legitimately cancelled. Therefore, it is clear that the Appellant was subject to suspension of her driving privileges when the DMV received notice of the cancellation of her insurance coverage on August 12, 2010. The record reflects that this suspension began on September 23, 2010, after notice to Appellant, and ended on October 11, 2010. The driving under suspension violation occurred on October 09, 2010 while the Appellant was under suspension for "cancellation of insurance" or failure to maintain insurance as required by the Motor Vehicle Financial Responsibility Act (ROA pp 29-33).

While there are several statutes that refer to providing and/or maintaining “proof” of financial responsibility and which provide for suspensions for non-compliance, these are separate and distinct from the Appellant’s suspension for “cancellation of insurance” the verification of which had previously been supplied to the DMV by the Appellant. See S.C. Code Ann. §§ 56-9-540 to 570 (2006) (“Proof of financial responsibility when required... may be given by filing [with the Department]: (1) [a] certificate of insurance... [or] (2) [a] bond...”); see also S.C. Code Ann § 56-9-361 (providing that the Department may allow a suspended driver to keep a license to operate a vehicle owned by an employer if the employer “furnishe[s] proof of financial responsibility...”); S.C. Code Ann §§ 56-9-440 to 470 (providing that if a judgment creditor of a motor vehicle accident consents, the judgment debtor who was uninsured at the time of the accident may retain driving privileges so long as the judgment debtor “furnishes proof of financial responsibility,” and if the judgment creditor does not consent, the judgment debtor’s license will remain suspended until the debtor fully satisfies every judgment and “gives proof of financial responsibility...”); S.C. Code Ann § 56-10-540 (“Whenever any proof of financial responsibility filed by a person as required by [the Act] no longer fulfills the purpose for which required, the director shall require other proof of financial responsibility...”). The Hearing Officer did not err in making this distinction.

The Appellant cites *SCDMV v. Carter* 06-ALJ-21-0875-AP to support her contention that the cancellation of insurance falls under the exception set forth in 56-1-1020(a)(4), however, there are two major ways that the instance case differs. In *Carter*, there was testimony that, prior to the date of the DUS violation, she had obtained insurance from a different company and was therefore “insured” on that date and her conviction resulted solely from her insurance being cancelled after she failed to pay the premium. The second and

perhaps most important distinction is that the DMV neither appeared at the OMVH hearing nor filed anything with the OMVH. The only evidence presented to the OMVH was from the Appellant.

There is nothing in the OMVH Record on Appeal which challenges the findings and conclusions of the Hearing Officer. The Appellant, although present, did not testify or present any exhibits at the hearing to establish that her suspension was for failure to file proof of financial responsibility. Although, the Appellant, as an exhibit to her brief before the ALC, attached a form which purports to establish that the Appellant was properly insured on the date of her traffic stop, October 09, 2010, this form was not presented to the OMVH Hearing Officer and this assertion was not presented to and ruled upon in the OMVH and was not a part of the Record on Appeal. Because the exhibit was not part of the Record on Appeal and the Appellant did not apply to the ALC for leave to present additional evidence, the Administrative Law Court held that the Court could not consider any evidence not included on the Record in reviewing this matter. (ALC Order dated January 30, 2014 p. 6). *See* S. C. Code Ann § 1-23-380(4). In the present Appeal, the Appellant once again seeks to have this Court consider the "Verification of Automobile Insurance through Progressive for Lisa Soto" which additional evidence which was not presented to the OMVH and was not considered by the ALC. The Respondent, SCDMV objects to its' consideration by this Court for the reasons aforestated by the Administrative Law Court. Furthermore, the DMV contends that even if the exhibit were to be considered, it would have no bearing on the issues which were before the OMVH hearing officer, the ALJ and the Court.

There is nothing in the Record to support the Appellant's contentions made in her brief. The Administrative Law Judge found and concluded that "the suspension of a driver's

license by the Department for “cancellation of insurance” is not the same as a suspension for “failure to file proof of financial responsibility” with the Department, and the habitual offender statute’s exception does not apply when the suspension is for the “cancellation of insurance” (ALC Order dated January 30, 2014 p.7). The Record contains substantial evidence to support the reasoning and determination reached by the Hearing Officer and affirmed by the ALJ. *See Lark v. Bilo, Inc.*, 276 S.C. 130, 276 S.E.2d 304.

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.

Respectfully submitted,



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April 18, 2014
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The Honorable Shirley C. Robinson, Administrative Law Judge

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Lisa Soto..... Appellant,

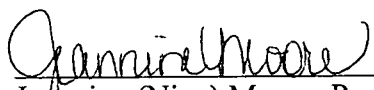
v.

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

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, April 18, 2014,
I served one (1) copy of the Respondents' Initial Brief and Designation of Matter by
depositing with the United States Postal Service, correct postage prepaid, to Counsel for
the Appellant at the address indicated below:

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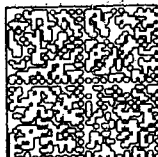
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