

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2013-002614

South Carolina Department of Motor Vehicles Respondent,

v.

Christopher Platt Appellant.

INITIAL BRIEF OF THE RESPONDENT

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STATEMENT OF ISSUES PRESENTED

- I. *DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THE APPELLANT IS A HABITUAL OFFENDER AS DEFINED BY S.C. CODE ANN. § 56-1-1020 AND THUS SUSTAINING THE SUSPENSION OF HIS DRIVING PRIVILEGES?*

- II. *THE DOCTRINE OF EQUITABLE ESTOPPEL DOES NOT APPLY TO THE DEPARTMENT OF MOTOR VEHICLES IN THE EXERCISE OF THE STATE'S POLICE POWER AND THE APPLICATION OF PUBLIC POLICY.*

STATEMENT OF THE CASE

In August 2011, in accord with S.C. Code Ann. § 56-1-1290, state law declared the Petitioner to be a habitual offender as a result of three major violations on and prior to August 13, 2011. Pursuant to S.C. Code Ann. § 56-1-1290(a), that resulted in a five-year habitual offender suspension beginning June 20, 2012, and scheduled to last until June 20, 2017.

On June 8, 2012, in accord with S.C. Code Ann. § 56-1-1230, the Petitioner applied to the Office of Motor Vehicle Hearings (OMVH), to have a hearing to show why he should not be declared a habitual offender. On June 12, 2012, the OMVH scheduled the hearing for July 31, 2012. The hearing notice was served on both parties via email on June 12, 2012.

The OMVH hearing officer held a hearing on July 31, 2012. The OMVH hearing officer issued a Final Order and Decision on October 8, 2012, ordering the suspension of the Respondent's driver's license be sustained. The Final Order and Decision was served on the South Carolina Department of Motor Vehicles (SCDMV) by email on October 8, 2012. The Appellant timely filed an appeal of the Final Order and Decision in the Administrative Law Court on October 19, 2012. By Order dated November 13, 2014, the Administrative Law Court ordered that the Final Order and Decision dated October 8, 2012, sustaining the suspension of Appellant's driver's license or driving privilege be affirmed.

ARGUMENT

I. DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THE APPELLANT IS A HABITUAL OFFENDER AS DEFINED BY S.C. CODE ANN. § 56-1-1020 AND THUS SUSTAINING THE SUSPENSION OF HIS DRIVING PRIVILEGES?

In this matter, it is clear that on May 21, 2012, the Appellant was properly declared a habitual offender pursuant to S.C. Code Ann. § 56-1-1020. The record reflects that the Appellant was charged and convicted of three separate and distinct major traffic offenses within a three year period (OMVH Final Order and Decision issued October 8, 2012, p. 2). The Appellant does not deny that he was convicted of the aforementioned violations which occurred within a three year period, on February 27, 2009, December 25, 2009 and August 13, 2011.

Appellant argues that the Hearing Officer erred in not concluding that the SCDMV should be estopped from declaring the Appellant a Habitual Traffic Offender because the SCDMV misrepresented the law in a letter to the Appellant. S.C. Code Ann. § 56-1-1130 provides that the SCDMV shall send a written notice to a person who it determines is in danger of becoming a habitual offender. The SCDMV notified the Appellant of his standing under the Habitual Offender law by letter dated December 1, 2011, that persons who are convicted of three major violations within a three year period will be classified as a habitual offender (OMVH Final Order and Decision dated October 8, 2012, p. 2; SCDMV Correspondence dated December 1, 2011). The SCDMV's letter does not misrepresent the law. The Appellant has misinterpreted the letter. The letter was not an effort by the SCDMV to advise the appellant of the law or of his rights thereunder. It was to simply advise him that he was in danger of becoming a habitual offender based upon the records of the SCDMV. The

SCDMV is not aware of a violation or charge unless and until a driver is convicted. Therefore, violations which have not been adjudicated are not and cannot be part of the SCDMV's records. A person can have committed the offenses for being determined a habitual offender, however, the determination cannot be made until the conviction is reported to the SCDMV and placed on the record which is then reviewed by the SCDMV. A driver cannot avoid the determination based upon his violation committed within three years by avoiding adjudication of his charges.

S.C. Code Ann. § 56-1-1020(d) provides that a person is deemed convicted of an offense on the date the offense occurred, provided he is subsequently convicted of committing the offense. The Hearing Officer correctly concluded that the record as maintained by the SCDMV shows that the Appellant has accumulated the convictions for separate and distinct offenses as described in S.C. Code Ann. § 56-1-1020 (a), (b) and (c) committed during a three year period. The SCDMV's notice regarding the driver's status as to becoming a habitual offender is not a condition precedent to being declared a habitual offender. *Wilkins v. Taylor* (S.C. 1977) 268 S.C. 371, 234 S.E.2d 212 (dealing with a predecessor statute identical to Section 56-1-1130). The SCDMV does not and is not required to provide legal advice in the notice. Well established precedent charges individuals with knowledge of the law, including the provisions of the South Carolina Habitual Offender Act. "Citizens are presumed to know the law and are charged with exercising 'reasonable care to protect their interests' " *Aherne v. State*, 392 S.C. 340, 355 709 S.E.2d 54, 61 (2011).

The Hearing Officer correctly concluded that "absent a showing that the Respondent does not qualify as a habitual offender, no relief from the suspension period is authorized by statute other than the opportunity to seek a reduction of the habitual offender suspension

period pursuant to § 56-1-1090 after serving at least two years of it” (OMVH Order dated October 8, 2012 p. 5). The Record contains substantial evidence to support the reasoning and determination reached by the Hearing Officer and affirmed by the Administrative Law Court. *See Lark v. Bilo, Inc.*, 276 S.C. 130, 276 S.E.2d 304.

II. *THE DOCTRINE OF EQUITABLE ESTOPPEL DOES NOT APPLY TO THE DEPARTMENT OF MOTOR VEHICLES IN THE EXERCISE OF THE STATE'S POLICE POWER AND THE APPLICATION OF PUBLIC POLICY*

By enacting S.C. Code Ann. § 56-1-1010 the General Assembly emphatically stated the public policy with regard to habitual traffic offenders as follows:

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 operation 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.

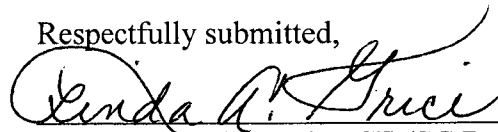
The Department of Motor Vehicles' administration of the habitual offender laws is an exercise of the State's police power and implementation of the State's public policy. *See Sponar v. S. C. Dep't of Public Safety*, 361 S.C. 35, 603 S.E. 2d 412 (Ct. App. 2004) (license to operate a motor vehicle is 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* (Ct. App. 2005) (implied consent laws are driven by public policy considerations of maintaining safe highways and roads). The doctrine of equitable estoppel does not apply in cases against a government entity when the matters involve the government's police power or the application

of public policy. *S.C. Dep't of Social Services v. Parker*, 275 S.C. 176, 268 S.E. 2d 282 (1980); *Morgan v. S.C. Budget and Control Board*, 377 S.C. 313, 659 S. E. 2d 263 (Ct. App. 2008). The Appellant's attempt to evoke equitable estoppel in this matter must, therefore, fail.

CONCLUSION

For the reasons set forth above, the order of the administrative law judge sustaining the October 8, 2012, order of the OMVH hearing officer should be affirmed.

Respectfully submitted,



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July 23, 2014
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2013-002614

South Carolina Department of Motor Vehicles Respondent,


v.

Christopher Platt Appellant.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, July 23, 2014,
I served one (1) copy of the Respondent's 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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July 23, 2014
Blythewood, South Carolina

Nikki R. Haley
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

July 23, 2014

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *South Carolina Department of Motor Vehicles v. Christopher Platt*
Appellate Case No: 2013-002614

Dear Ms. Kitchings:


Enclosed for filing please find the following documents:

1. Unbound original and one copy of the Respondent's Initial Brief;
2. Original and one copy of the Respondent's Designation of Matter To Be Included In the Record on Appeal with Certificate of Counsel of SCACR, Rule 209 (c) compliance; and
3. Certificate of Service of these documents on counsel for the Appellant.

Please file the original and copies necessary for SCACR compliance and return the extra copies to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

In kind regards,


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Timothy Clay Kulp, Esquire
C. Austin Elliott, Esquire

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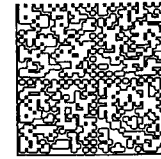
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