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SC Court of Appeals

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. 2015-001622

James Winston Davis, Jr.....Respondent,

v.

South Carolina Department of Motor Vehicles.....Appellant.

INITIAL BRIEF OF THE RESPONDENT

Frank A. Barton, Esquire
ATTORNEY AT LAW, P.A.
Post Office Box 3972
West Columbia, South Carolina 29170
803-739-1824 / fax 803-739-1888

H. Wayne Floyd, Esquire
WAYNE FLOYD LAW FIRM
Post Office Box 3972
West Columbia, South Carolina 29170
803-739-1824 / fax 803-739-1888

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

STATEMENT OF ISSUES ON APPEAL.....4

ARGUMENT

I. THE IMPOSITION OF A HABITUAL OFFENDER SUSPENSION MORE THAN SIX YEARS AFTER RESPONDENT'S THIRD TRAFFIC CONVICTION IS DENIAL OF FUNDAMENTAL FAIRNESS AND VIOLATES THE REQUIREMENTS OF DUE PROCESS. (ISSUE 1).....4

CONCLUSION.....7

TABLE OF AUTHORITIES

CASES:

Hipp v. SC Department of Motor Vehicles, 381 SC 323, 673 SE2d 416(2009).....5

State v. Chavis, 261 SC 408, 200 SE2d 390(1973)..... 5

S.C. Section 56-1-10906

STATEMENT OF ISSUES ON APPEAL

1. Was the suspension of Respondent's drivers' license as a habitual offender more than six years after his third qualifying conviction a violation of the standards of fundamental fairness and due process?

ARGUMENT I

THE IMPOSITION OF A HABITUAL OFFENDER SUSPENSION MORE THAN SIX YEARS AFTER RESPONDENT'S THIRD TRAFFIC CONVICTION IS DENIAL OF FUNDAMENTAL FAIRNESS AND VIOLATES THE REQUIREMENTS OF DUE PROCESS. (ISSUE 1)

The pertinent facts in this matter are uncontested. Appellant had convictions for driving under suspension on February 19, 2004; May 5, 2005; and October 20, 2006. Despite the conviction date of October 20, 2006, for the third conviction, for reasons for which were clearly no fault of Respondent, the third conviction was not posted to Respondent's driving record with the South Carolina Department of Motor Vehicles until December 5, 2012. On that same date the Department of Motor Vehicles sent an Official Notice to Respondent advising him his driving privileges were being suspended for five years beginning January 4, 2013. In a well-reasoned and written Final Order the Administrative Law Court ruled the imposition of the driver's license suspension after a delay of more than six years from Respondent's third conviction was a denial of

fundamental fairness and a violation of the requirements of due process pursuant to Hipp v. SC Department of Motor Vehicles, 381 SC 323, 673 SE2d 416(2009).

In Hipp, supra, the South Carolina Supreme Court reviewed the imposition of a driver's license suspension of a South Carolina license twelve years after Hipp was convicted for driving under the influence in Georgia. The Court in Hipp determined a substantial delay in imposition of the suspension was a manifest denial of fundamental fairness and a violation of due process. Respondent respectfully submits the Administrative Law Court was correct in ruling and concluding the current Respondent's situation was controlled by the decision in Hipp.

The Administrative Law Court also considered the imposition of a license suspension in State v. Chavis, 261 SC 408, 200 SE2d 390(1973).

In Chavis, Chavis argued the suspension of his license approximately one year after his refusal to submit to a breath analyzer test and his conviction for driving under the influence violated his due process rights. The South Carolina Supreme Court ruled a delay of approximately one year in imposing a driver's license suspension was not violative of a driver's due process rights.

It is respectfully submitted the Administrative Law Court correctly determined the current situation is more akin to Hipp than Chavis. The delay in imposing the penalty in Chavis was just under one year. Furthermore, the penalty involved was the imposition of a six month license suspension for failure to take a breath analyzer test and an additional six month suspension for a conviction of driving under the influence, for a total of one year. These penalties were imposed just under one year after Chavis' conviction.

The current situation involves the imposition of a five year license suspension more than six years after Mr. Davis' last relevant conviction. It is respectfully submitted the attempt by the State to impose a five year license suspension more than six years after the last conviction violates the principals of fairness in due process as set forth in Hipp.

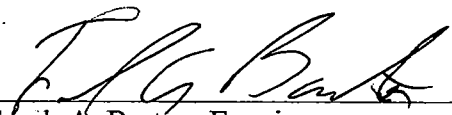
The Administrative Law Court correctly concluded under the specific facts in this case a delay in over six years in imposing such a substantial license suspension would be a denial of fundamental fairness and a violation of the requirements of due process as set forth in Hipp v. SC Department of Motor Vehicles, supra. Respondent had gone a substantial period without driver's license privileges and had already paid reinstatement fees and had completed all requirements to regain his license in 2010. Furthermore, the delay in imposing the habitual offender suspension would have denied Respondent the further ability to take advantage of S.C. Section 56-1-1090 which would have allowed him to reapply for his license after serving a two year suspension. The decision of the administrative law court should be affirmed.

CONCLUSION

The Respondent respectfully submits the Administrative Law Court was correct in concluding the current situation was controlled by Hipp v. SC Department of Motor Vehicles. It is fundamentally unfair and a denial of due process to impose a five year suspension of driving privileges more than six years after the last applicable conviction. For these reasons the decision of the Administrative Law Court should be affirmed.

Respectfully submitted,

October 21, 2015
West Columbia, South Carolina


Frank A. Barton, Esquire
ATTORNEY AT LAW, P.A.
Post Office Box 3972
West Columbia, South Carolina 29170
803-739-1824 / fax 803-739-1888

H. Wayne Floyd, Esquire
WAYNE FLOYD LAW FIRM
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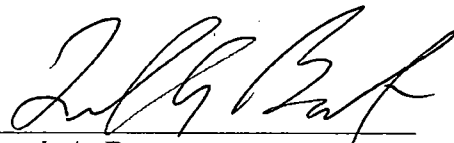
South Carolina Department of Motor Vehicles.....Appellant.

CERTIFICATE OF SERVICE

The undersigned does hereby certify one copy of the **INITIAL BRIEF OF THE RESPONDENT** was served in the foregoing action by regular mail on October 21, 2015, to the Attorney for Appellant at the following address:

Frank L. Valenta, Esquire
OFFICE OF GENERAL COUNSEL
Post Office Box 1498
Blythewood, South Carolina 29016

October 21, 2015
West Columbia, S.C.



Frank A. Barton
Attorney for the Respondent