

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 29 2015

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge **SC Court of Appeals**

Appellate Case No. 2015-001622

James Winston Davis, Jr. Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

INITIAL REPLY BRIEF OF THE APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WAS THE HEARING OFFICER CORRECT THAT THE RESPONDNET'S THREE DUS CONVICTIONS SUPPORTED THE RESPONDENT HAVING BEEN DECLARED A HABITUAL OFFENDER?

- II. WAS THE HEARING OFFICER CORRECT THAT THE DELAYED HABITUAL OFFENDER DECLARATION OF RESPONDENT'S DRIVER'S LICENSE DID NOT VIOLATE THE STANDARDS OF FUNDAMENTAL FAIRNESS OR THE STANDARDS OF DUE PROCESS?

STATEMENT OF THE CASE

Appellant retains the statement of the case set forth in its initial brief.

STANDARD OF REVIEW

Appellant retains the standard of review set forth in its initial brief.

ARGUMENT

- I. WAS THE HEARING OFFICER CORRECT THAT THE RESPONDNET'S THREE DUS CONVICTIONS SUPPORTED THE RESPONDENT HAVING BEEN DECLARED A HABITUAL OFFENDER?

Appellant retains all arguments under this section set forth in its initial brief.

- II. WAS THE HEARING OFFICER CORRECT THAT THE DELAYED HABITUAL OFFENDER DECLARATION OF RESPONDENT'S DRIVER'S LICENSE DID NOT VIOLATE THE STANDARDS OF FUNDAMENTAL FAIRNESS OR THE STANDARDS OF DUE PROCESS?

Appellant retains all arguments under this section set forth in its initial brief and adds one additional argument. Respondent argues that imposition of his habitual offender suspension at this time denies Respondent the ability to seek a reduction of his habitual offender suspension under S.C. Code §56-1-1090. This argument is legally erroneous. S.C. Code §56-1-1090 contains no deadline or timeout provision for seeking a

reduction of a habitual offender suspension. S.C. Code §56-1-1090 merely requires that at least two (2) years of the habitual offender suspension have been served and that the following conditions are met:

- (a) the person must not have had a previous habitual offender suspension in this or another state;
- (b) the person must not have driven a motor vehicle during the habitual offender suspension period;
- (c) the person must not have been convicted of or have charges pending for any alcohol or drug violations committed during the habitual offender suspension period;
- (d) the person must not have been convicted of or have charges pending for any offense listed in Section 56-1-1020 committed during the habitual offender suspension period; and
- (e) the person must not have any other mandatory driver's license suspension that has not yet reached its end date.

S.C. Code §56-1-1090(A)(1). In this case, Respondent has never been declared a habitual offender before, so subsection (a) will be met. Whether Respondent will meet the requirements of subsections (b)-(e) cannot be determined until at least two (2) years of the habitual offender suspension elapse. There is nothing in the record that indicates Respondent has a greater or smaller chance of successfully completing at least two (2) years of his habitual offender suspension without violations of subsections (b)-(e) than any other person declared a habitual offender.

CONCLUSION

For the reasons set forth above and in Appellant's initial brief, the order of the administrative law judge reversing the order of the OMVH hearing officer should be overruled.

Respectfully submitted,



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October 26, 2015

Blythewood, South Carolina

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CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Initial Reply Brief of Appellant complies with Rule 267 SCACR.



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Blythewood, SC

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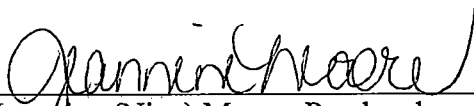
v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, October 26, 2015,
I served one (1) copy of the Appellant's Initial Reply Brief by depositing with the United
States Postal Service, correct postage prepaid, to Counsel for the Respondent at the
address indicated below:

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October 26, 2015
Blythewood, South Carolina