THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM _____ 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.

FINAL BRIEF OF THE APPELLANT

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2) 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

On January 29, 2004, the Lexington County Sheriff's Department charged the Respondent with driving under suspension (ticket # 87207CK). The Respondent was convicted of this violation on February 19, 2004. On April 21, 2005, the City of West Columbia charged the Respondent with driving under suspension (ticket # 81681DA). He was convicted of this violation on May 5, 2005. On May 17, 2005, the Lexington County Sheriff's Department charged the Respondent with driving under suspension (ticket # 95405CZ). He was convicted of this violation on October 20, 2006. Thus, the Respondent was charged and convicted of three separate and distinct traffic violations within a three year period.

Appellant, South Carolina Department of Motor Vehicles, (hereinafter, "Appellant" or "DMV") did not receive the October 20, 2006, ticket immediately after conviction. Instead, after several annual audit requests, the Lexington County Sheriff's Department sent the ticket on September 22, 2011. However, the Sheriff's Department only provided the front of the ticket. Since the front of the ticket indicated "over," the DMV could not process the ticket without seeing the back of the ticket. Therefore, on April 20, 2012, the DMV sent a letter to the Lexington County Sheriff's Office

requesting clarification. (R. p. 69.) The Lexington County Sheriff's Department did not respond to this request for clarification until October 25, 2012. (R. pp. 67-68.) Based on this clarification, the DMV finally had all the information necessary to post this conviction to Respondent's driving history and did so on December 5, 2012.

By letter dated December 5, 2012, the DMV notified the Respondent that the October 20, 2006, conviction was going to result in his driver's license being suspended for three months, from December 20, 2012, until March 20, 2013. (R. p. 84.) By a second letter also dated December 5, 2012, the Respondent was notified that the three major convictions that had occurred within a three year period caused him to be declared a habitual offender pursuant to S.C. Code § 56-1-1020. (R. p. 74.).

The Respondent filed a request for an administrative hearing in the Office of Motor Vehicle Hearings ("OMVH") on December 13, 2012. (R. p. 79.) Administrative Hearing Officer Robert F. Harley, Jr. conducted a hearing on March 19, 2013. Twenty-three months later, on February 13, 2015, Mr. Harley issued an order sustaining the suspension. (R. pp. 58-63.) The Respondent appealed to the Administrative Law Court ("ALC") on March 10, 2015. By Order dated July 16, 2015, Administrative Law Judge S. Phillip Lenski issued an order reversing the OMVH order.

This appeal follows.

FACTS

To assist this Court in fully understanding Respondent's Official 10 Year Driver Record (ALC ROA pp. 39-41), and the factual history of this case, the following time line may be of assistance:

1/29/04	Arrested for DUS (Ticket #87207CK)[1]
1/29/04	Arrested for a controlled substance violation (Ticket #87206CK)[2]
2/19/04	Convicted of 1/29/04 DUS (Ticket #87207CK)[3]
2/19/04	Convicted of 1/29/04 controlled substance violation (Ticket #87206CK)[4]
2/19/04 to 5/19/04	License suspended for 1/29/04 DUS (Ticket #87207CK)[5]
3/1/04	Arrested for controlled substance violation (Case No. 04-GS-32-2873)[6]
5/20/04 to 11/20/04	License suspended for 1/29/04 controlled substance violation (Ticket #87206CK)[7]
4/21/05	Arrested for DUS (Ticket #81681DA)[8] *(Respondent had not yet cleared his prior suspensions and was, therefore, still suspended).*
2/14/05	Court sent DMV an affidavit stating Respondent had surrendered his CDL license on 2/14/05[9]
5/5/05	Convicted of 4/21/05 DUS (Ticket #81681DA)[10]
5/5/05 to 8/5/05	License suspended for 4/21/05 DUS (Ticket #81681DA)[11]
5/17/05	Arrested for DUS (Ticket #95405CZ)[12]
6/28/05	DMV notifies Respondent that he is in danger of being declared a Habitual Offender. The letter provided a listing of the major and minor offenses on its back side.[13]
2/4/06	Convicted of 3/1/04 controlled substance violation (Case No. 04-GS-32-2873)[14]
2/14/06 to 2/14/07	License suspended for 3/1/04 controlled substance violation (Case No. 04-GS-32-2873)[15]
10/20/06	Convicted of 5/17/05 DUS (Ticket #95405CZ)[16]
3/22/10	Met reinstatement requirements for: 2/19/04 DUS; 2/19/04 controlled substance violation; 3/1/04 controlled substance violation; 4/21/05 DUS; and the subsequent suspensions that ran from 2/19/04 to 5/19/04, 5/20/04 to 11/20/04, 5/5/05 to 8/5/05, 2/14/06 to 2/14/07 for the same convictions (Ticket # 87207CK, 87206CK, 81681DA, and Case No. 04-GS-32-2873).[17]

[1] ALC ROA, pp. 41 & 35-36.
[2] ALC ROA, p. 40.
[3] ALC ROA, pp. 41 & 35-36.
[4] ALC ROA, p. 40.
[5] ALC ROA, pp. 41 & 35-36.
[6] ALC ROA, p. 40.
[7] ALC ROA, p. 40.
[8] ALC ROA, pp. 40 and 33-34.
[9] ALC ROA, p. 41.
[10] ALC ROA, pp. 40 and 33-34.
[11] ALC ROA, pp. 40 and 33-34.
[12] ALC ROA, p. 39.
[13] ALC ROA, p. 38.
[14] ALC ROA, p. 40.
[15] ALC ROA, p. 40.
[16] ALC ROA, p. 39.
[17] ALC ROA, pp. 40-41.

4/16/10	Class D South Carolina Driver's License reissued[18]
10/7/10	Arrested for controlled substance violation (Case No. 11-GS-32-1322)[19]
7/25/11	Convicted of 10/7/10 controlled substance violation (Case No. 11-GS-32-1322)[20]
8/23/11 to 4/12/11	License suspended for 10/7/10 controlled substance violation (Case No. 11-GS-32-1322)[21]
4/12/2011	Met reinstatement requirements for 10/7/10 controlled substance violation and the subsequent suspension that ran from 8/23/11 to 4/12/11 for the same violation (Case No. 11-GS-32-1322)[22]
7/12/11	Charged with speeding more than 10 mph but LT 25 mph (Ticket #26254FS)[23]
8/4/11	Convicted of 7/12/11 speeding more than 10 mph but LT 25 mph (Ticket #26254FS)[24]
9/22/11	DMV receives notice of 5/17/05 DUS (Ticket #95405CZ)[25]
4/20/12	DMV sends letter to the Lexington County Sheriff's Office asking for additional information to verify the identity of the person that received the 10/20/06 conviction for the 5/17/05 DUS and to provide a copy of the back of the ticket (Ticket #95405CZ)[26]
10/25/12	DMV receives response from the Lexington County Sheriff's Office related to Respondent's 10/20/06 conviction for the 5/17/05 DUS (Ticket #95405CZ).[27] DMV now able to process Ticket #95405CZ and apply it to the driver record.
12/5/12	DMV notifies Respondent that he has been convicted of DUS (Ticket #95405CZ) and his driver's license will be suspended for this conviction from 12/20/12 until 3/20/13.[28]
12/5/12	DMV notifies Respondent that he has been declared a Habitual Offender related to his three major offenses license will be suspended from 1/4/13 to 1/4/18.[29]

[18] ALC ROA, p. 39.
[19] ALC ROA, p. 40.
[20] ALC ROA, p. 40.
[21] ALC ROA, pp. 39-40.
[22] ALC ROA, p. 40.
[23] ALC ROA, p. 39.
[24] ALC ROA, p. 39.
[25] ALC ROA, pp. 30-31.
[26] ALC ROA, p. 32.
[27] ALC ROA, pp. 30-31.
[28] ALC ROA, p. 47.
[29] ALC ROA, pp. 37 & 46.

ARGUMENT

1) WAS THE HEARING OFFICER CORRECT THAT THE RESPONDENT'S THREE DUS CONVICTIONS SUPPORTED THE RESPONDENT HAVING BEEN DECLARED A HABITUAL OFFENDER?

State law defines a habitual offender as any person whose record as maintained by the Department of Motor Vehicles record shows that he has accumulated convictions for:

(a) three or more separate and distinct major offenses or

(b) ten or more separate and distinct minor and/or major offenses

committed within a three year period. S. C. Code Ann. § 56-1-1020 (2006). The Respondent, according to his driving record, was charged with and convicted in three separate and distinct major traffic offenses committed within a three year period (R. pp. 58-63, 67-68, and 70-78).

The record shows that Respondent was: charged with driving under suspension on January 29, 2004, and convicted of this violation on February 19, 2004; charged with driving under suspension on April 21, 2005, and convicted of this violation on May 5, 2005; and, charged with driving under suspension on May 17, 2005, and convicted of this violation on October 20, 2006 (R. pp. 67-68 and 70-78). It is therefore undisputed that the record as maintained by the DMV establishes a prima facie case and supports the finding that the Respondent is a habitual offender as defined by the statute.

At the hearing, the Respondent argued that the hearing officer should disregard the third conviction because the convicting court had taken too long to submit the conviction to the DMV. That is, though the Respondent appeared and pled guilty before the City of Lexington Municipal Court on October 20, 2006, the DMV did not receive the conviction record until October 25, 2012. The Respondent argued that his constitutional right to due process was denied by a six (6) year delay.

Significantly, the habitual offender statutes do not contain any deadlines or statutes of limitation. Rather, S.C. Code § 56-1-1020 states "An 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..." (Emphasis added). Further, S.C. Code §56-1-1030 states "When a person is convicted of

one or more of the offenses listed in Section 56-1-1010(a), (b), or (c), *the Department of Motor Vehicles must review its records for that person.* If the department determines *after review of its records* that the person is an habitual offender..." (Emphasis added). These sections make clear that the DMV can only act, and must act, based upon what its records disclose and when the records disclose it—not when the court or law enforcement agency acts. S.C. Code §56-7-30(A), relied on by the Administrative Law Judge in his Final Order, facilitates the supplying records to the DMV, but the DMV's duty to act is not based upon when the court acts, but upon when Appellant's records disclose facts sufficient to declare someone a habitual offender.

If the legislative intent were otherwise, the statute would have said the Appellant can declare someone a habitual offender only "provided the department receives notice of the violation within ten days of the conviction" or some other limiting language. The legislature did not use this type of language. The statutory language is not accidental, as it very precisely mandates when the Appellant must act (after review of Appellant's records). Therefore, even though the Lexington County Sheriff's Office failed to timely submit this notice to Appellant, once Appellant had the notice and the additional information needed to process it, Appellant acted within twenty-seven (27) working days. This cannot be considered an unreasonable or prejudicial delay.

In this case, the hearing officer wrote an excellent, detailed analysis of the Respondent's situation, addressing the difference between the cases of *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973) and *Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). The hearing officer ultimately found that that the facts in Respondent's case "are more closely aligned to Chavis than to Hipp." The hearing officer specifically noted the following:

1) "Chavis noted, like here, that from the evidence presented there was no reason to believe the delay was on the part of the SC DMV, but instead was on the part of the law enforcement agency."
2) "Like Chavis, there is no contention that there was unreasonable delay on the part of the SC DMV once it received the appropriate notices, and no other suggestions of any improper conduct on the part of the Department itself."

3) "Further, [like *Chavis*] Respondent argued that if he had known he could have served [h]is suspension earlier and it would be over. However, there is no evidence that he tried to rectify the matter."

Basically, the findings of the hearing officer were that the Respondent failed to show at the hearing that he was constitutionally deprived of his due process rights or that he had suffered any injury or prejudice from Appellant's actions. Despite these findings of fact,[30] the ALC engaged in a reweighing of the facts with regard to whether Respondent was constitutionally deprived of his due process rights and whether he had suffered any injury or prejudice from Appellant's actions. See *Final Order*, pp. 7-8.

In addition, the Respondent essentially sought equitable relief from the OMVH and ALC. In doing so, he needed to seek that relief with clean hands. See, for example, *Emery v. Smith*, 361 S.C. 207, 603 S.E.2d 598 (2004). When the Respondent pled guilty, he knew from his extensive experience that a conviction for driving under suspension led to a driver's license suspension. Moreover, less than two (2) months after his 5/17/05 arrest for driving under suspension (color coded yellow in the chart above), Respondent had been advised of his risk of being declared a habitual offender.[31] As the hearing officer pointed out (R. p. 62), the Respondent did not take any action to rectify his situation.

The *Hipp* case held "that imposition of a suspension after more than twelve years delay, where Respondent bears no fault for the delay, is manifestly a denial of fundamental fairness."[32] (Emphasis added). Even the ALC found that the facts of this case "lie somewhere between those of Chavis and those of Hipp." The ALC held that "to reach any other result under the circumstances here... would place a non-existent affirmative burden upon the Appellant and any other licensee to shepherd through the

[30] Although this detailed discussion takes place in the section labeled "Conclusions of Law" in the OMVH *Final Decision and Order*, the Hearing Officer was applying the law to his findings of fact contained earlier in his decision. For example, "I find that the facts before me are...," "Like Chavis...," and "I find the same situation here... there is no evidence that..."

[31] ALC ROA, p. 38 and acknowledged on page 1 of the Final Order from the ALC dated July 16, 2015.

[32] Interestingly, *Hipp*, although it does not create a bright line rule, implied that a ten (10) year limit would be appropriate in these types of cases. See *Hipp*, at 326, 673 S.E.2d at 417 ("...we note that Title 56 of the South Carolina Code, which addresses 'motor vehicles,' is replete with ten-year limitations for purposes of sentence enhancement and keeping record of convictions.").

suspension of his driver's license." This holding fails to recognize that Respondent's primary argument throughout his OMVH contested case hearing and ALC appeal is that his suspension should be estopped by the doctrine of laches. See R. pp. 45-51 & 79 and ALC Brief of Appellant. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright,* 323 S.C. 303, 474 S.E.2d 421 (1996); *Hallums v. Hallums,* 296 S.C. 195, 371 S.E.2d 525 (1988); *Muir v. C.R. Bard, Inc.,* 336 S.C. 266, 519 S.E.2d 583 (Ct.App.1999). Laches is an equitable doctrine, which arises upon the failure to assert a known right. *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.,* 358 S.C. 209, 235, 595 S.E.2d 253, 267 (Ct.App.2004). Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *Muir* at 296, 519 S.E.2d at 599. The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums* at 199, 371 S.E.2d 525, 371 S.E.2d at 528; *All Saints* at 235, 595 S.E.2d at 267.

"Importantly, delay alone in assertion of a right does not, in and of itself, constitute laches. Rather, so long as there is no knowledge of the wrong committed and no refusal to embrace an opportunity to ascertain facts, there can be no laches." *Muir* at 296, 519 S.E.2d at 599 (citations omitted); *see Brown v. Butler* 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct.App.2001); *compare Wall v. Huguenin* 305 S.C. 100, 406 S.E.2d 347 (1991) (holding the failure to exercise an option to purchase land for thirteen years was

not unreasonable and laches did not apply) *with Chambers of S.C., Inc. v. County Council for Lee County,* 315 S.C. 418, 434 S.E.2d 279 (1993) (finding contractor's six-month delay in taking action on its objection to a contract awarded by county to another contractor was barred by laches).

The inquiry into the applicability of laches is highly fact-specific and each case must be judged by its own merits. *Muir* at 297, 519 S.E.2d at 599. Thus, the determination of whether laches has been established is largely within the discretion of the trial court. *Brown v. Butler,* 347 S.C. at 265, 554 S.E.2d at 434 (Ct.App.2001); *Gibbs v. Kimbrell,* 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct.App.1993). The burden of proof is on the party asserting laches. *Muir,* 336 S.C. at 297, 519 S.E.2d at 599. Finally, laches is an affirmative defense and must be pled. *Mack v. Edens,* 306 S.C. 433, 412 S.E.2d 431 (Ct.App.1991).

There is nothing in the record that indicates Appellant knew of any right prior to October 25, 2012, when Appellant received the necessary information from the Lexington County Sheriff's Office to process the notice. Further, there is nothing in the record which challenges the findings and conclusions of the Hearing Officer. Accordingly, the record contains substantial evidence to support the reasoning and determination reached by the Hearing Officer and his denial of Respondent's laches defense. *See Lark v. Bilo, Inc.,* 276 S.C. 130, 276 S.E.2d 304.

2) 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?

In the *Chavis* case, the South Carolina Supreme Court held that Chavis' license suspension was effected without unreasonable delay and that fundamental fairness and due process were not violated by a one year delay between an implied consent violation (December 1, 1971) and conviction for driving under the influence (March 7, 1972) and when his suspension began (February 8, 1973).[33] This case, like in the *Chavis* case, contains no allegation that Appellant engaged in any unreasonable delay once it received the appropriate notice and information to process the notice. In fact, Appellant, upon receiving the required notice and additional information necessary to process the notice, processed Respondent's suspensions (for the driving under suspension and habitual offender) within twenty-seven (27) working days.[34]

Chavis further held that in "the absence of injury or prejudice resulting" from DMV's delay a driver/licensee "has no standing to challenge on constitutional grounds the enforcement of the various statutory provisions by the [DMV]." *Chavis*, 200 S.E.2d at 391. Respondent has failed to show or even allege any injury or prejudice resulting from the twenty-seven (27) day delay between when DMV received the required notice and additional information necessary to process the notice for his October 20, 2006 driving under suspension conviction. Rather, Respondent argues that he was injured and/or prejudiced by the delay in the reporting of the conviction from the court to the DMV. *See* above argument regarding laches and clean hands.

The issue of driving convictions being reported in a delayed manner to agencies/organization like DMV is not limited to the state of South Carolina. Several

[33] The South Carolina Highway Department was not notified of Chavis' implied consent violation or conviction until on or about February 1, 1973.
[34] Weekends and three (3) state holidays for Veteran's Day and Thanksgiving not counted.

states have tackled this very issue, allowing suspensions to stand even in the face of long delayed reports. For example:

1) thirteen (13) month delay between out-of-state and in-state suspensions for the same offense;[35]
2) fifteen (15) month delay between conviction and revocation;[36]
3) seventeen (17) month delay between refusal to take chemical test and scheduling of hearing;[37]
4) nineteen (19) month delay between accident and commencement of administrative proceedings;[38]
5) twenty-one (21) month delay between an out-of-state conviction and license revocation;[39]
6) a two and a half (2 ½) year delay between an implied consent violation and the license suspension hearing;[40]
7) three (3) year delay between conviction and receipt of abstract of judgment;[41]
8) three (3) year delay between conviction and revocation;[42]
9) three (3) year delay between conviction and revocation;[43]
10) three (3) year delay between conviction and revocation;[44] and

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[35] *Boyd v. Division of Motor Vehicles*, 307 N.J.Super. 356 (1998).
[36] *Lundsten v. Motor Vehicles Div.*, 91 Or.App. 95 (1988).
[37] *Minnick v. Melton*, 53 A.D.2d 1016 (NY 1976).
[38] *Dubiel v. Department of Motor Vehicles*, 1993 WL 265500 (Conn. 1993), unpublished opinion.
[39] *Miller v. Cline, Department of Motor Vehicles*, 193 W.Va. 210 (1995).
[40] *Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (2011).
[41] *In re Petition of Donley*, 217 W.Va. 449 (2005).
[42] *Celata v. Registry of Motor Vehicles*, 1995 WL 808614 (Mass. 1995) (unpublished opinion).
[43] *Lyver v. Motor Vehicles Div.*, 91 Or.App. 244 (1988).
[44] *Dubiel v. Dept. of Motor Vehicles*, 1993 WL 265500 (1993) (unpublished opinion).

11) three and a half (3 ½) year delay between DMV receiving notice of third qualifying conviction for habitual traffic violation and sending notice of ten (10) year suspension to driver;[45]

Most of these cases also hold that an administrative delay alone is not enough to violate due process and fundamental fairness. Rather, the driver must show that s/he has suffered some prejudice to a substantial right by the delay. *See Chavis*, 261 at 411 ("If follows that... Chavis here has no standing to challenge on constitutional grounds... in the absence of injury or prejudice resulting to him from the delay"); *Alvarez*, 249 at 293 ("We have never held that administrative delay alone, without prejudice, violates due process."); *Celata*, 2015 WL 808614 at 3 ("if a substantial right of the appellant's was prejudiced by the agency's action, this Court may set aside the agency's decision"); *Lyver*, 91 at 246 ("Petitioner has suffered no prejudice."); *State, Div. of Motor Vehicles v. Pepe*, 379 N.J.Super. 411, 416 (2005) ("'Delay will not general affect the validity of an administrative determination, particularly where no prejudice is shown.'"); *Mullen v. New York State Dept. of Motor Vehicles,* 144 A.D.2d 886, 888 (1988) ("petitioner's operating privileges were not suspended during the period of delay and she has failed to identify any resulting prejudice"); *Dubiel*, 1993 WL 265500 at 3 ("The court further finds that the plaintiff was not prejudiced by the delay to the extent that he was denied due process."); *In re Petition of Donley*, 217 W.Va. 449, 453 (2005) ("Although we have found that the delay was unreasonable in this case, Mr. Donley is still not entitled to relief because no prejudice flowed from the delay.").

In this case, Respondent cannot show any prejudice to a substantial right. The United States Supreme Court has long held that states have the right to regulate the use of

[45] *Thomas v. Indiana Bureau of Motor Vehicles*, 979 N.E.2d 169 (2012).

state roads. *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586 (1971). Furthermore, there is no fundamental "right to drive." *Miller v. Reed*, 176 F.3d 1202 (9th Cir. 1999). Respondent has argued that because he voluntarily did not hold a driver's license from 2005 to 2010 he has served his habitual suspension and would be prejudiced by having to serve the suspension now. This is not accurate. As stated previously, Respondent turned in his CDL on February 14, 2005 and was not issued another driver's license until April 16, 2010. So, it appears that he went five (5) years without a driver's license. What Respondent overlooks, however, is that he also served suspensions for driving under suspension and conviction of a controlled substance violation during this same time (May 5, 2005 to August 5, 2005 and February 14, 2006 to February 14, 2007). So, with the greatest consideration given to Respondent that could be possible be given under these facts, the most time he could have served of the five (5) year habitual offender suspension would be 3 ¾ years. This would mean, even under the most favorable review, that Respondent still needed to serve 1 ¼ years of the habitual offender suspension.[46] This consideration does not even take into account the fact that Respondent did not satisfy all his reinstatement requirements for prior suspensions/convictions until March 22, 2010, and, as a result, was not eligible to obtain a driver's license due to failure to meet those reinstatement requirements until March 22, 2010. Essentially, except for his 1 ¼ year worth of suspensions during this time, Respondent voluntarily elected not to obtain a driver's license. Certainly, Respondent cannot be prejudiced by his own voluntary decision not to obtain a driver's license.

[46] Given Respondent's driving history, particularly his extensive history of driving under suspension (not fully revealed by the Official 10 year driving history contained in the record), it is extremely doubtful that his habitual offender suspension would have been reduced in any amount.

CONCLUSION

For the reasons set forth above, the order of the administrative law judge reversing the order of the OMVH hearing officer should be rescinded.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Appellant's Final Brief complies with South Carolina Supreme Court Order 2007-08-13-02 Amended by Order 2014-04-15-02, filed April 15, 2104.

Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
South Carolina Department of Motor Vehicles

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Blythewood, SC

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CERTIFICATE OF COUNSEL

The Undersigned Counsel certifies that the attached Final Brief is in compliance with SCACR 211(b).

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Assistant General Counsel
South Carolina Department of Motor Vehicles

November 6, 2015
Blythewood, SC

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PROOF OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, November 6, 2015, I served one (1) copy of the ***Record on Appeal, Final Brief of Appellant, and Final Reply Brief of Appellant*** 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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