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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.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Winston Davis, Jr.,	)	Docket No. 15-ALJ-21-0112-AP
Appellant,	)	
	)	**FINAL ORDER**
v.	)	
South Carolina Department of Motor Vehicles,	)	
Respondent.	)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed by James Winston Davis, Jr. (Appellant) on March 10, 2015. The Appellant seeks review of a Final Order and Decision issued by the Respondent South Carolina Department of Motor Vehicles' (Department) Office of Motor Vehicle Hearings (OMVH) on February 13, 2015 in which the suspension of the Appellant's driver's license or privilege was sustained upon a finding that the Appellant is a habitual offender.

On appeal, the Appellant argues that the suspension of his drivers' license more than six years after his last qualifying traffic conviction violates the standards of fairness and thus, that he was denied due process. The court has jurisdiction to hear this matter pursuant to Section 1-23-660(D) of the South Carolina Code (Supp. 2009). Upon review of the record, the parties' briefs and the law, the Hearing Officer's Final Order and Decision of February 13, 2015 is reversed.

BACKGROUND

By letter dated June 28, 2005, the Department advised the Appellant that under the habitual offender laws, any person who is convicted of a minimum number of major or minor violations within a three year period will be classified as a habitual offender and his or her driving privileges will be suspended. The letter continued by advising the Appellant that the Department's records indicated that he had accumulated two major violations and that a third conviction of any additional major or minor violations which would classify him as a habitual offender would result in his driving privileges suspended for a period of five years.

FILED
JUL 16 2015
SC ADMIN. LAW COURT

On May 17, 2005, the Appellant was charged with driving under suspension. He was subsequently convicted of the offense on October 20, 2006. Evidence in the record establishes that the Department actually received the Appellant's conviction information on September 22, 2011 but was unable to verify some of the information. The Department waited until April 20, 2012 to send a letter to the Lexington County Sheriff's Department requesting clarification. Then, nearly six months later, on October 25, 2012, the Department received the requested information and finally posted the Appellant's 2006 conviction on December 5, 2012, more than six years after it had occurred.

On December 5, 2012, the Department sent a letter to the Appellant stating that he had been declared to be a habitual offender pursuant to Sections 56-1-1030 and -1090 of the South Carolina Code (Supps. 2008 and 2009) for having accumulated the following major violations in a three year period: (1) a conviction dated October 20, 2006 for a driving under suspension violation on May 17, 2005; (2) a conviction dated May 5, 2005 for a driving under suspension violation on April 21, 2005; and (3) a conviction dated February 19, 2004 for a driving under suspension violation on January 29 2004. The Appellant was advised that his driver's license or privilege would be suspended for a mandatory five year period commencing January 4, 2013 and concluding on January 4, 2018. By letter dated December 13, 2012, the Appellant requested a contested case hearing as to the Department's declaration that he was a habitual offender.

An OMVH Hearing Officer conducted a hearing on March 19, 2013. The Appellant did not dispute his convictions but argued that the Department should not have been permitted to apply his conviction of October 20, 2006 because of the inordinate delay in its posting on December 5, 2012. In support of his argument, the Appellant referenced Section 15-3-540(2) of the South Carolina Code (1976) which provides for a three year statute of limitations for any type of forfeiture and also argued a lack of fundamental fairness.

On February 13, 2015, the Hearing Officer issued a Final Order and Decision sustaining the suspension of the Appellant's driver's license. In reaching his decision, the Hearing Officer outlined the dates of the Appellant's "three separate and distinct" major traffic violations and convictions that occurred within a three year period as outlined above. In support of his decision, the Hearing Officer stated that while Section 56-7-30 of the South Carolina Code (Supp. 2005) requires that the a ticket must be forwarded to the Department within ten days, the statute provides

no penalty for not doing so and in particular, does not prohibit the Department from posting a disposition including a conviction that was not timely received.[1]

In the Final Order and Decision, the Hearing Officer engaged in a lengthy analysis of Hipp v. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) and State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973). In deciding that the present case was more akin to Chavis, the Hearing Officer sustained the suspension. In doing so, the Hearing Officer concluded that the Appellant was aware of the law as further evidenced by the Appellant's argument that if he had known he could have served his suspension earlier, it would have been completed. The Final Order and Decision noted that the there was an absence of any evidence that the Appellant attempted to rectify the situation.

The Appellant filed a Notice of Appeal with this court on March 10, 2015. The basis of the appeal is that the Department's substantial delay in posting his third conviction and suspending his license is so fundamentally unfair that it is tantamount to a denial of due process.

ISSUE ON APPEAL

Whether the suspension of the Appellant's drivers' license as a habitual offender more than six years after his third qualifying traffic conviction violates the standards of fundamental fairness and due process.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. S.C. Code Ann. § 1-23-600 (Supp. 2012). The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2009). As the OMVH is an "agency" under the South Carolina Administrative Procedures Act (APA), the APA's standard of review governs appeals from the decisions and orders of the APA. S.C. Code Ann. §§ 1-23-310(2) and

[1] Section 56-70-30(A) provides that the disposition of traffic citations must be forwarded to the Department within ten days of the disposition of the case by final trial court action or nolle prosequi. As Section 56-70-30(A) sets forth no penalty for non-compliance, the Department is not deprived of its jurisdiction to post the disposition or suspend a license. Johnston v. S.C. Dep't. of Labor, Licensing & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 263, 617 S.E.2d 363 (2005) (failure by the Board to serve written notice of decision on licensee within the statutory time limit did not affect Board's jurisdiction because the statute did not set forth consequences for failure to serve written notice of decision within statutory time limit). While not jurisdictional, the requirement of Section 56-70-30(A) that the disposition be forwarded to the Department within ten days is instructive that the process is to be completed in a timely manner.

1-23-380 (Supp. 2008); See also Byerly Hosp. v. South Carolina State Health & Human Services Finance Com'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Ann. § 1-23-380(5) (Supp. 2008); See also S.C. Code Ann. §1-23-600(E) (Supp. 2012) (directing administrative law judges to conduct appellate review in the same manner prescribed in Section 1-23-380).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Public Service Com'n of South Carolina, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Resources Conservation Com'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995); Bilton, 282 S.C. at 641, 321 S.E.2d at 68 (citing Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981)).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. Byerly Hosp., supra. The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. See Fowler v. Lewis, 260 S.C. 54, 194 S.E.2d 191 (1973) (citing Fast Stops, Inc. v. Ingram, 276 S.C.

593, 281 S.E.2d 118 (1981). An appeal from an action of an administrative agency must be sustained if supported by substantial evidence. Hamm v. American Telephone & Telegraph Co., 302 S.C. 212, 394 S.E.2d 842 (1990).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Corp., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health & Human Services Fin. Com'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). "A reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark, 276 S.C. at 136, 276 S.E.2d at 307 (1981)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Section 56-1-1030 of the South Carolina Code (Supp. 2008) provides that when a person is convicted of one or more of the offenses outlined in Section 56-1-1020(a), the Department must review its records for that person. If the Department determines after review of its records that the person is a habitual offender as defined in Section 56-1-1020, the Department must revoke or suspend the person's driver's license. The suspension shall last five years. S.C. Code Ann. § 56-1-1090 (Supp. 2009). A person is a habitual offender if he or she is convicted of any three of the following offenses within a three year period:

(1) Voluntary manslaughter, involuntary manslaughter or reckless homicide resulting from the operation of a motor vehicle;

(2) Operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs;

(3) Driving or operating a motor vehicle in a reckless manner;

(4) Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked, except a conviction for driving under suspension for failure to file proof of financial responsibility;

(5) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used;

(6) Failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identify ...

S.C. Code Ann. § 56-1-1020(a) (Supp. 1996).

Here, the record contains unrefuted evidence that within a three year period, the Appellant was convicted of three distinct offenses arising out of separate acts pursuant to Section 56-1-1020(a). Thus, the Department met its burden of proof in establishing that the Appellant qualified under the statute as a habitual offender. The Appellant argues however, that the imposition of the license suspension more than six years after the last conviction violates the principles of fairness and due process. This court agrees.

This issue has been addressed by the South Carolina Supreme Court. In State v. Chavis, supra, Chavis argued that the suspension of his license one year after his refusal to submit to a breathalyzer test and conviction for driving under the influence violated his due process rights. For reasons not appearing in the record, the Department was not timely notified of either Chavis' breathalyzer refusal or conviction. After remarking that upon notification the Department effected the license suspension without unreasonable delay, the Supreme Court stated that fundamental fairness and due process were not violated by the one year delay. However, the Supreme Court stated that there may be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay and that such was not the case in Chavis.

This issue was addressed again by the South Carolina Supreme Court more than thirty years later in Hipp, supra. Hipp argued that a twelve year gap between Hipp's Georgia DUI conviction and the Department's suspension denied him due process. In Hipp, the court noted that a person's interest in his drivers' license is property that the state may not take away without satisfying the requirements of due process. (citing Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1991)); see also S.C. Dep't. of Motor Vehicles v. McCarson, 391 S.C. 136, 148, 705 S.E.2d 425, 431 (2011). In likening the facts of Chavis to Hipp, the court restated that while it found fundamental fairness was not violated by a suspension after a one year delay, it allowed for a circumstance under which it could be soundly held that the State had no right to suspend a driver's license after a lengthy delay. While the Supreme Court failed to set forth a bright line rule in Hipp,

it found that the imposition of a suspension after more than twelve years where Hipp bore no fault for the delay, constituted a manifest denial of fundamental fairness.

The facts of this case lie somewhere between those of Chavis and those of Hipp. Based on the Appellant's testimony that had he known he could have served his suspension earlier such that it would already have been completed, the Hearing Officer likened this case to Chavis. The Hearing Officer then concluded that the Appellant was charged with knowledge of the law that his license was to be suspended yet did nothing to try to rectify the matter.

The court disagrees and find that the hearing officer's conclusions of law are affected by error of law, are clearly erroneous and are violative of the Appellant's constitutional rights. Through no fault of either the Appellant or the Department, it is uncontroverted that the Appellant's conviction for driving under suspension dated October 6, 2006 was not posted and that the Appellant was not advised of the suspension until more than six years later on December 5, 2012. While the Hearing Officer was correct that in concluding that the Appellant is charged with knowledge of the law, the court contrarily finds as a matter of law that there is no statutory or other obligation imposing a duty upon the Appellant to take any affirmative action, including "rectify[ing] the matter." While it may have been suggested in Chavis, there is no mention of any obligation on the part of the licensee in Hipp to take any affirmative action. The Supreme Court's opinion in Hipp is devoid of any language that remotely insinuates the need for any compulsory action on the part of the licensee. In Hipp, the court further stated that, "we find that the imposition of a suspension after more than twelve years delay,[2] where [the licensee] bears no fault for the delay, is manifestly a denial of due process." Hipp, 381 S.C. at 325, 673 S.E.2d at 417.

Based upon Hipp, the analysis set forth above and under the specific facts of this case, the delay in the Appellant's suspension, which exceeds the total time within which the suspension would have run had it been timely imposed, violates the Appellant's Constitutional rights to due process under the Fourteenth Amendment of the United States Constitution. This is particularly true since application of the suspension now would prejudice the Appellant.[3] While the court is reluctant to rule in this manner, as the undisputed evidence establishes that his multiple violations of the motor vehicle laws caused him to qualify as a habitual offender subject to suspension of

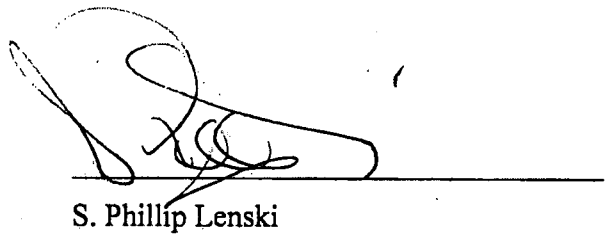
[2] The court notes that the parties responsible for reporting are not parties to this action.
[3] By the time the Appellant was notified of the suspension, he had already paid all reinstatement fees and completed all of the Department's requirements to regain his license in 2010.

driver's license, to reach any other result under the circumstances here would be a manifest denial of fundamental fairness, and would place a non-existent affirmative burden upon the Appellant and any other licensee to shepherd through the suspension of his driver's license.

ORDER

IT IS HEREBY ORDERED that the Order and Decision of the Office of Motor Vehicle's Hearing Officer sustaining the Department of Motor Vehicles' suspension of the Appellant's driver's license and privileges as a habitual offender is **REVERSED** and that the Appellant's drivers' license and privileges shall be reinstated at no cost to the Appellant.

AND IT IS SO ORDERED.

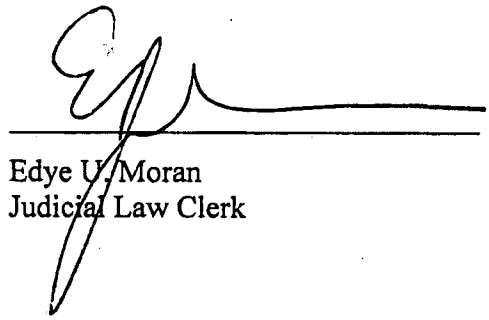


S. Phillip Lenski
Administrative Law Judge

July 16, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Edye U. Moran
Judicial Law Clerk

July 16, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. James Winston Davis, Jr., Respondent.	)))))))))	Docket No. 12-OMVH-02-6606-CC **FINAL ORDER AND DECISION**

Appearances:

For the Respondent: Wayne Floyd, Esquire
For the Petitioner: by certified documents

Other Information:

Respondent's South Carolina Driver's License No.: 8540025
Type of Hearing: Habitual Traffic Offender Suspension Hearing
S. C. Code Ann. § 56-1-1020 and § 56-1-1030

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to the Respondent's request for a contested case hearing regarding the habitual offender declaration by the South Carolina Department of Motor Vehicles (Petitioner or SC DMV) pursuant to S.C. Code Ann. 56-1-1030 (Supp. 2011).

Pursuant to written notice to the parties, a hearing was held before me on March 19, 2013, in Columbia, South Carolina. The Petitioner filed certified documents in the matter but did not appear at the hearing. Pursuant to S.C. Code Ann. 1-23-660 (Supp.2011), the SCDMV is not required to appear.

After reviewing the entire record and considering all evidence, I find the habitual offender suspension of Respondent's driver's license or driving privilege must be sustained.

FINDINGS OF FACT

Having reviewed the testimony and evidence presented by the Petitioner and the Respondent and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and subject matter of the hearing was given to the parties.
2. On December 5, 2012, the Petitioner forwarded an Official Notice to the Respondent at the address it had on file. The Petitioner advised the Respondent that he had been declared a Habitual Offender and that his driver's license or driving privileges were subject to being suspended for a five (5) year period beginning January 4, 2013, and ending January 4, 2018.
3. On January 29, 2004, the Respondent was charged with Driving under Suspension (Ticket #87207CK) and was convicted on February 19, 2004. This charge was posted to the Respondent's driving record as maintained by the Petitioner on March 19, 2004.
4. On April 21, 2005, the Respondent was charged with Driving under Suspension (Ticket #81681DA) and was convicted on May 5, 2005. This charge was posted to the Respondent's driving record as maintained by the Petitioner on June 28, 2005.
5. On May 17, 2005, the Respondent was charged with Driving under Suspension (Ticket #95405CZ) and was convicted on October 20, 2006. This charge was posted to the Respondent's driving record as maintained by the Petitioner on December 5, 2012. The documents submitted into evidence seem to indicate that the ticket was first received by the SC DMV on September 22, 2011. SC DMV was unable to read some information and was unable to verify other information and it asked the Lexington County Sheriff's Department for more clarification by letter of April 20, 2012. The information was again received on October 25, 2012. It was then posted to the driving record on December 5, 2012.
6. The Respondent was charged with three (3) separate and distinct major traffic violations within a three (3) year period.

7. The Respondent testified that he was without a license from the time of these charges until 2010. He testified that had he known he was going to serve a habitual offender suspension, he could have done it during that period.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

1. In S.C. Code Ann § 1-23-660 (Supp. 2011, the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings. Effective January 1, 2006, the Department of Motor Vehicle Hearings was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, and revocations of licenses and registrations issued by SCDMV. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).

2. All hearings presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Officer of Motor Vehicle Hearings (OMVH).

3. Pursuant to S. C. Code Ann. § 1-23-660 (Supp.2011), all appeals from final decisions of the Hearing Officers shall be to the SCALC after January 2, 2006 in accordance with its rules of procedure.

4. South Carolina Department of Motor Vehicles (SCDMV) is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws of this state. S. C. Code Ann. §56-1-5 (2006)

5. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. *See* Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a driver's license habitual offender suspension and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. *See* Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.

6. Pursuant to S. C. Code Ann. § 56-1-1020 (2006), a conviction means a final conviction, forfeiture of bail or plea of guilty or nolo contendere.

7. Pursuant to S.C. Code Ann. § 56-1-1020 (2006), a habitual offender is any person whose record as maintained by the Petitioner shows that he has accumulated the convictions for separate and distinct offenses as defined in subsection (a), (b) and (c) committed within a three year period; provided that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes as one offense.

a. Major violations are: voluntary manslaughter, involuntary manslaughter, reckless homicide from the operating of a motor vehicle, driving under the influence, driving in a reckless manner, driving under suspension except for failure to file proof of financial responsibility; a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used and failure to stop close to the scene of accident that resulted in an injury or death.

b. Minor violations are those violations, which are required to be reported to the Petitioner in which four (4) or more points are assigned pursuant to §56-1-720.

c. Offenses include those made under federal law, law of another state, or any municipal or county ordinance of another state which substantially conforms to this statute.

d. For purpose of determining the number of convictions for separate and distinct offenses committed during any three (3) year period, a person shall be deemed to be convicted of an offense on the date the offenses were committed if he is subsequently convicted of committing such an offense.

8. The Respondent argued that the Petitioner should not be allowed to apply the October 20, 2006, conviction (Driving under Suspension, Ticket #95405CZ) because the delay between the date of conviction and the date the SC DMV posted the violation and sought to impose the suspension was too long. S.C. Code §56-7-30 provides a ticket should be forwarded to the SC DMV within ten (10) days of the conviction. I note that this code section is part of the Title 56 chapter that governs the use uniform traffic tickets in the State of South Carolina as managed by the South Carolina Department of Public Safety. The code section provides no penalty for the failure to send a ticket in the time period. There is nothing that sets forth a penalty and certainly nothing that provides that the SC DMV cannot post a conviction if it was not received within the ten days. *See* S.C. Dep't of Motor Vehicles vs. Sean Martin, Docket No. 08-ALJ-21-0091-AP

(*citing* Johnston v. S.C. Dep't. of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 293, 617 S.E.2d 363 (2005)).

However, I do recognize that the South Carolina Supreme Court has addressed this issue. In Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) the court stated that a twelve-year gap between the time of Hipp's Georgia DUI conviction and the suspension imposed by the SC DMV, denied Mr. Hipp due process because the actions were fundamentally unfair. However, in Hipp the Supreme Court did say "while we do not intend to set forth a bright line rule, we find 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." Hipp, 381 S.C. at 325, 673 S.E.2d at 417. The Court also said, "[t]hough neither dispositive nor directly applicable to the instant case, 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." Id. at 326, 673 S.E.2d at 417.

The Court cited its previous decision in State v. Chavis, 261 S.C. 408, 200 S.E. 2d 390 (1973), in which it found fundamental fairness was not violated by a suspension after a one-year delay, but allowed that there might be circumstances under which a delay would be too long. While the time period in this case lies somewhere between Chavis and Hipp, I find that the facts before me in this matter are more closely aligned to Chavis than to Hipp. First, 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. 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 suggestion of any improper conduct on the part of the Department itself. Further, the Court said, "Chavis was himself charged with knowledge of the law, and that thereunder his license was required to be suspended. There is nothing in the record to suggest that he sought, wished or desired to have the suspensions promptly ordered so that he could get them behind him. For aught the record shows, he simply kept quiet and continued to drive in the hope that his license suspensions would somehow or other get overlooked and never be imposed." Id. at 411, 200 S.E. 2d 391 (1973). I find the same situation here. The Respondent argued that if he had known he could have served is suspension earlier and it would be over. However, there is no evidence that he tried to rectify the matter.

Therefore, I conclude that the relief requested by the Respondent in the regard to the suspension as a habitual offender must be denied.

ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the habitual offender suspension of Respondent's driver's license or driving privilege as a habitual offender must be sustained.

AND IT IS SO ORDERED.

Robert F. Harley, Jr.
Senior OMVH Hearing Officer

February 13, 2015
Columbia, South Carolina

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FEB 13 2015
SCOMVH

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

James Winston Davis, Jr.,	)	Docket No. 15-ALJ-21-0112-AP
Appellant,	)	**BRIEF OF APPELLANT**
v.	)	
South Carolina Department of Motor Vehicles,	)	
Respondent,	)	

THE STATE OF SOUTH CAROLINA

In the Administrative Law Court

APPEAL FROM
SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Robert Harley, Hearing Officer

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ATTORNEYS FOR APPELLANT

STATEMENT OF ISSUES ON APPEAL

1. Did the suspension of Appellant's drivers' license more than six years after his traffic violation conviction violate the standards of fundamental fairness required by standards of due process?

STATEMENT OF CASE

This appeal involves a hearing for a Habitual Traffic Offender Suspension pursuant to S.C. Code 56-1-1030(Supp. 2011). A hearing was held on March 19, 2013, and a Final Order and Decision was issued by the Hearing Officer on February 13, 2015, which concluded the Habitual Traffic Offender Suspension of Appellant's Drivers' License or driving privilege as a Habitual Offender should be sustained.

The underlying facts surrounding Appellant's suspension were essentially uncontested. Appellant received his third driving under suspension ticket within three years on May 17, 2005. He was convicted on that charge on October 20, 2006. This charge was not posted to Appellant's Driving Record until December 5, 2012. On the same date, December 5, 2012, an Official Notice was sent to Appellant notifying him his Drivers' License or driving privileges were being suspended for five years, from January 4, 2013, until January 4, 2018.

Before the Hearing Officer Appellant argued pursuant to Hipp v. SC Department of Motor Vehicles, 381 SC 323, 673 SE2d 416(2009), the substantial delay of over six years by the State of South Carolina in attempting to impose the Habitual Offender Suspension violated the principles of fundamental fairness and therefore was a denial of

due process. For this reason, Appellant argued, the license suspension should not be imposed.

Notice of the Final Order and Decision of the Hearing Officer was received by Appellant on February 13, 2015. Notice of Appeal in this action was filed on March 10, 2015.

ARGUMENT I

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

As stated before, 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 of October 20, 2006, for reasons for which were clearly no fault of Appellant, the third conviction of October 20, 2006, was not posted to his 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 Appellant advising him his driving privileges were being suspended for five years beginning January 4, 2013.

Appellant respectfully submits current situation is controlled by Hipp v. SC Department of Motor Vehicles, supra. In Hipp the South Carolina Supreme Court reviewed the imposition of a drivers' license suspension in South Carolina twelve years after his conviction for driving under the influence in Georgia. The Court in Hipp,

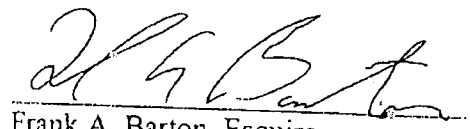
determined a substantial delay in imposition of a suspension is a manifest denial of fundamental fairness and a violation of due process. It is respectfully submitted Hipp is directly on point and a delay of over six years in imposition of the habitual offender suspension is a denial of fundamental fairness and due process.

It is important to note Mr. Davis did not have a drivers' license from 2005 through 2010. In 2010 Mr. Davis paid all reinstatement fees, completed all requirements of the Department of Motor Vehicles, and regained his drivers' license. (Hearing Transcript, p. 5). Mr. Davis underwent a self-imposed suspension of his drivers' license and privileges for a period of five years after his third driving under suspension conviction. It is fundamentally unfair to now allow the State of South Carolina to suspend his drivers' license for an additional five years when the delay of more than six years was not in any way attributable to the fault of Appellant.

CONCLUSION

Appellant respectfully submits the current situation is 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 his driving privileges more than six years after his last applicable conviction. This is especially true in view of the fact Mr. Davis went without a drivers' license for period of five years. The decision of the Hearing Officer should be reversed.

Respectfully submitted,



May 27, 2015
West Columbia, South Carolina

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ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

James Winston Davis, Jr.,	)	Docket No. 15-ALJ-21-0112-AP
Appellant,	)	**CERTIFICATE OF SERVICE**
v.	)	
South Carolina Department of Motor Vehicles,	)	
Respondent,	)	

The undersigned does hereby certify one copy of the **BRIEF OF APPELLANT** was served in the foregoing action by regular mail on May 27, 2015, to the Attorney for Respondent at the following address:

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

May 27, 2015
West Columbia, S.C.

Frank A. Barton
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 15-ALJ-21-0112-AP

HONORABLE ROBERT F. HARLEY, JR., HEARING OFFICER

JAMES WINSTON DAVIS, JR. ..... APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES ..... RESPONDENT

BRIEF OF RESPONDENT

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THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

James Winston Davis, Jr., Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	Docket No. 15-ALJ-21-0112-AP SCDL No. 8540025 **BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES**

This matter comes before the Administrative Law Court pursuant to the appeal of James Winston Davis, Jr., which seeks review of the February 13, 2015, Final Order & Decision sustaining the Appellant's habitual offender suspension. The Respondent South Carolina Department of Motor Vehicles (SCDMV) seeks to have the Final Order & Decision affirmed and the suspension remain.

STATEMENT OF THE ISSUE ON APPEAL

Did the hearing officer correctly rule that the Appellant had driving offense convictions that supported his having been declared a habitual offender?

STATEMENT OF THE CASE

The Appellant was arrested on January 29, 2004, for driving under suspension (ticket # 87207CK). The Appellant was convicted of this violation on February 19, 2004. On April 21, 2005, the Appellant was charged with driving under suspension (ticket # 81681DA). He was convicted of this violation on May 5, 2005. On May 17, 2005, Appellant was charged with driving under suspension (ticket # 95405CZ). He was convicted of this violation on October 20, 2006.

Thus, the Appellant was charged and convicted of three separate and distinct traffic violations within a three year period

Appellant timely requested an administrative hearing, which was held on March 19, 2013. After reviewing the record and considering all the evidence, the hearing officer sustained the suspension of the Appellant's driver's license.

The Appellant has appealed.

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code Section 1-23-380(A)(6).

> (A) A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review....
>
> (6) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
> (a) In violation of constitutional or statutory provisions;
> (b) In excess of the statutory authority of the agency;
> (c) Made upon unlawful procedure;
> (d) Affected by other error of law;
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981), our Supreme Court set out the standard of evidentiary review under the South Carolina Administrative Procedure Act:

> [Section 1-23-380(g)(5)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.
>
> We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of

> administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

> The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

See also *Schudel v. South Carolina Alcoholic Beverage Control Commission*, 276 S.C. 138, 276 S.E.2d 308 (1981); *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 18 (1981).

An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc., supra.* In *Lark*, our Supreme Court quoted *Consolo v. Federal Maritime Commission*, 383 U.S. 611, 16 L.Ed.2d 131, 86 S.Ct. 1118 (1966), to define substantial evidence:

> We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."... "It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury..." This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark, 276 S.C. at 136, 276 S.E.2d at 311. *See, also, Dorman v. DHEC*, 565 S.E.2d 119, 350 S.C. 159 (Ct. App. 2002); *Hamm v. South Carolina Public Service Commission and Wild Dunes Utilities, Inc.*, 311 S.C. 295, 422 S.E.2d 118 (1992).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC, supra*; Hamm *v. American Telephone & Telegraph Co., supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENT

The hearing officer was correct that the existence of the Appellant's three convictions supported the Appellant 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 Appellant, according to his driving record, was charged with and convicted in three separate and distinct major traffic offenses committed within a three year period (ROA pp. 30-36).

The Record on Appeal shows that he 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 (ROA pp. 30-36). It is therefore undisputed that the record as maintained by the SCDMV establishes a prima facie case and supports the finding that the Appellant is a habitual offender as defined by the statute.

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

The hearing officer wrote an excellent analysis of the Appellant'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). Basically, the Appellant failed to show at the hearing that he was constitutionally deprived of his due process rights.

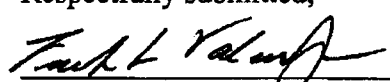
In addition, the Appellant has essentially sought equitable relief from the Office of Motor Vehicle Hearings. In doing so, he needed to seek that relief with clean hands. See, for example, *Emery v. Smith*, 361 S.C. 207, 603 S.E.2d 598 (2004). When the Appellant pled guilty, he knew from experience that a conviction for driving under suspension led to a driver's license suspension. As the hearing officer pointed out (ROA p. 25), the Appellant did not take any action to rectify his situation.

There is nothing in the Record on Appeal 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. *See Lark v. Bilo, Inc.*, 276 S.C. 130, 276 S.E.2d 304.

CONCLUSION

Based upon the foregoing arguments, the Respondent SCDMV respectfully requests that the Final Order and Decision issued February 13, 2015, be affirmed and the suspension remain.

Respectfully submitted,



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June 26, 2015
Blythewood, South Carolina

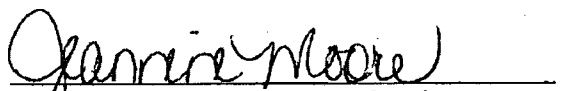
THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

James Winston Davis, Jr., Appellant, v. South Carolina Department of Motor Vehicle, Respondent.	Docket No. 15-ALJ-21-0112-AP SCDL No. 8540025 **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 26, 2015, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Respondent's Brief to the following:

Frank A. Barton, Esquire
Post Office Box 3972
West Columbia, SC 29171

as Counsel for the Appellant.



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

June 26, 2015
Blythewood, South Carolina

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Attorney at Law, P.A.
P.O. Box 3972 / 1611 Augusta Highway
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Of Counsel: H. Wayne Floyd Law Office, P.A.
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RECEIVED
MAR 12 2015
DMV
GENERAL COUNSEL

March 10, 2015

Via Hand Delivery
ATTENTION: CLERK
SOUTH CAROLINA ADMINISTRATIVE LAW COURT
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: South Carolina Department of Motor Vehicles v. James Winston Davis, Jr.
12-OMVH-02-6606-CC

Attention Clerk:

Enclosed for filing please find the original and a copy of the Notice of Appeal in the above referenced matter. By copy of this letter I am also serving a copy upon the South Carolina Department of Motor Vehicles. A check in the amount of $150.00 is enclosed for the filing fee. I am also enclosing a Certificate of Service. Please do not hesitate to call if you have any questions or concerns.

Truly Yours,

Frank A. Barton

FAB/lfm

cc: South Carolina Department of Motor Vehicles

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,	)	Docket No. 12-OMVH-02-6606-CC
Petitioner,	)	**NOTICE OF APPEAL**
v.	)	
James Winston Davis, Jr.,	)	
Respondent,	)	

The Respondent James Winston Davis, Jr., does hereby appeal the Final Order and Decision issued in this action by the Honorable Robert F. Harley, Jr., Senior OMVH Hearing Officer issued on February 13, 2015. A copy of the Final Order and Decision is attached hereto. The Respondent Davis appeals on the following grounds:

a. The Hearing Officer erred in concluding the habitual offender suspension of Respondent's drivers' licenses or driving privileges must be sustained.

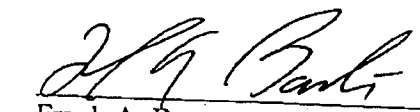
b. The Hearing Officer erred in concluding the habitual offender suspension was proper despite the delay of imposition of the suspension many years after Respondent's driving under suspension conviction of October 20, 2006.

c. The Hearing Officer erred in failing to conclude the imposition of the habitual offender suspension after a delay of many years subsequent to Respondent's conviction of October 20, 2006, was a violation of Respondent Davis' due process rights as not being fundamentally fair. See, Hipp v. SC Dept Motor

Vehicles, 381 SC 323, 673 SE2d 416 (2009).

Respectfully submitted,

March 10, 2015
West Columbia, South Carolina



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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,	)	Docket No. 12-OMVH-02-6606-CC
Petitioner,	)	**CERTIFICATE OF SERVICE**
v.	)	
James Winston Davis, Jr.,	)	
Respondent,	)	

The undersigned does hereby certify one copy of the **NOTICE OF APPEAL** was served in the foregoing action by regular mail on March 10, 2015, to the following address:

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March 10, 2015
West Columbia, S.C.

Leann F. McCormick
Legal Assistant to Frank A. Barton

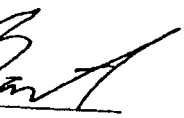
STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,	)	Docket No. 12-OMVH-02-6606-CC
Petitioner,	)	**REQUEST FOR TRANSCRIPT OF RECORD**
v.	)	
James Winston Davis, Jr.,	)	
Respondent,	)	

I, Frank A. Barton, request the Transcript of Record for the case South Carolina Department of Motor Vehicles, Petitioner, v. James Winston Davis, Jr., Respondent, Docket Number 12-OMVH-02-6606-CC. The hearing in this matter was held on March 19, 2013, before the Honorable Robert F. Harley, Jr.

I understand that I am responsible for all costs associated with the preparation of this transcript pursuant to Rule 32 of the Rules of Procedure for the Administrative Law Court.

March 10, 2015
West Columbia, South Carolina



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Received
2-13-15
DMV GENERAL COUNSEL

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. James Winston Davis, Jr., Respondent.	)))))))))	Docket No. 12-OMVH-02-6696-CC **FINAL ORDER AND DECISION**

Appearances:

For the Respondent: Wayne Floyd, Esquire
For the Petitioner: by certified documents

Other Information:

Respondent's South Carolina Driver's License No.: 8540025
Type of Hearing: Habitual Traffic Offender Suspension Hearing
S. C. Code Ann. § 56-1-1020 and § 56-1-1030

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to the Respondent's request for a contested case hearing regarding the habitual offender declaration by the South Carolina Department of Motor Vehicles (Petitioner or SC DMV) pursuant to S.C. Code Ann. 56-1-1030 (Supp. 2011).

Pursuant to written notice to the parties, a hearing was held before me on March 19, 2013, in Columbia, South Carolina. The Petitioner filed certified documents in the matter but did not appear at the hearing. Pursuant to S.C. Code Ann. 1-23-660 (Supp.2011), the SCDMV is not required to appear.

After reviewing the entire record and considering all evidence, I find the habitual offender suspension of Respondent's driver's license or driving privilege must be sustained.

FINDINGS OF FACT

Having reviewed the testimony and evidence presented by the Petitioner and the Respondent and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and subject matter of the hearing was given to the parties.
2. On December 5, 2012, the Petitioner forwarded an Official Notice to the Respondent at the address it had on file. The Petitioner advised the Respondent that he had been declared a Habitual Offender and that his driver's license or driving privileges were subject to being suspended for a five (5) year period beginning January 4, 2013, and ending January 4, 2018.
3. On January 29, 2004, the Respondent was charged with Driving under Suspension (Ticket #87207CK) and was convicted on February 19, 2004. This charge was posted to the Respondent's driving record as maintained by the Petitioner on March 19, 2004.
4. On April 21, 2005, the Respondent was charged with Driving under Suspension (Ticket #81681DA) and was convicted on May 5, 2005. This charge was posted to the Respondent's driving record as maintained by the Petitioner on June 28, 2005.
5. On May 17, 2005, the Respondent was charged with Driving under Suspension (Ticket #95405CZ) and was convicted on October 20, 2006. This charge was posted to the Respondent's driving record as maintained by the Petitioner on December 5, 2012. The documents submitted into evidence seem to indicate that the ticket was first received by the SC DMV on September 22, 2011. SC DMV was unable to read some information and was unable to verify other information and it asked the Lexington County Sheriff's Department for more clarification by letter of April 20, 2012. The information was again received on October 25, 2012. It was then posted to the driving record on December 5, 2012.
6. The Respondent was charged with three (3) separate and distinct major traffic violations within a three (3) year period.

7. The Respondent testified that he was without a license from the time of these charges until 2010. He testified that had he known he was going to serve a habitual offender suspension, he could have done it during that period.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

1. In S.C. Code Ann § 1-23-660 (Supp. 2011, the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings. Effective January 1, 2006, the Department of Motor Vehicle Hearings was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, and revocations of licenses and registrations issued by SCDMV. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).

2. All hearings presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Officer of Motor Vehicle Hearings (OMVH).

3. Pursuant to S. C. Code Ann. § 1-23-660 (Supp.2011), all appeals from final decisions of the Hearing Officers shall be to the SCALC after January 2, 2006 in accordance with its rules of procedure.

4. South Carolina Department of Motor Vehicles (SCDMV) is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws of this state. S. C. Code Ann. §56-1-5 (2006)

5. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. *See* Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a driver's license habitual offender suspension and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. *See* Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.

6. Pursuant to S. C. Code Ann. § 56-1-1020 (2006), a conviction means a final conviction, forfeiture of bail or plea of guilty or nolo contendere.

7. Pursuant to S.C. Code Ann. § 56-1-1020 (2006), a habitual offender is any person whose record as maintained by the Petitioner shows that he has accumulated the convictions for separate and distinct offenses as defined in subsection (a), (b) and (c) committed within a three year period; provided that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes as one offense.

a. Major violations are: voluntary manslaughter, involuntary manslaughter, reckless homicide from the operating of a motor vehicle, driving under the influence, driving in a reckless manner, driving under suspension except for failure to file proof of financial responsibility; a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used and failure to stop close to the scene of accident that resulted in an injury or death.

b. Minor violations are those violations, which are required to be reported to the Petitioner in which four (4) or more points are assigned pursuant to §56-1-720.

c. Offenses include those made under federal law, law of another state, or any municipal or county ordinance of another state which substantially conforms to this statute.

d. For purpose of determining the number of convictions for separate and distinct offenses committed during any three (3) year period, a person shall be deemed to be convicted of an offense on the date the offenses were committed if he is subsequently convicted of committing such an offense.

8. The Respondent argued that the Petitioner should not be allowed to apply the October 20, 2006, conviction (Driving under Suspension, Ticket #95405CZ) because the delay between the date of conviction and the date the SC DMV posted the violation and sought to impose the suspension was too long. S.C. Code §56-7-30 provides a ticket should be forwarded to the SC DMV within ten (10) days of the conviction. I note that this code section is part of the Title 56 chapter that governs the use uniform traffic tickets in the State of South Carolina as managed by the South Carolina Department of Public Safety. The code section provides no penalty for the failure to send a ticket in the time period. There is nothing that sets forth a penalty and certainly nothing that provides that the SC DMV cannot post a conviction if it was not received within the ten days. *See* S.C. Dep't of Motor Vehicles vs. Sean Martin, Docket No. 08-ALJ-21-0091-AP

(*citing* Johnston v. S.C. Dep't. of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 293, 617 S.E.2d 363 (2005)).

However, I do recognize that the South Carolina Supreme Court has addressed this issue. In Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) the court stated that a twelve-year gap between the time of Hipp's Georgia DUI conviction and the suspension imposed by the SC DMV, denied Mr. Hipp due process because the actions were fundamentally unfair. However, in Hipp the Supreme Court did say "while we do not intend to set forth a bright line rule, we find 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." Hipp, 381 S.C. at 325, 673 S.E.2d at 417. The Court also said, "[t]hough neither dispositive nor directly applicable to the instant case, 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." Id. at 326, 673 S.E.2d at 417.

The Court cited its previous decision in State v. Chavis, 261 S.C. 408, 200 S.E. 2d 390 (1973), in which it found fundamental fairness was not violated by a suspension after a one-year delay, but allowed that there might be circumstances under which a delay would be too long. While the time period in this case lies somewhere between Chavis and Hipp, I find that the facts before me in this matter are more closely aligned to Chavis than to Hipp. First, 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. 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 suggestion of any improper conduct on the part of the Department itself. Further, the Court said, "Chavis was himself charged with knowledge of the law, and that thereunder his license was required to be suspended. There is nothing in the record to suggest that he sought, wished or desired to have the suspensions promptly ordered so that he could get them behind him. For aught the record shows, he simply kept quiet and continued to drive in the hope that his license suspensions would somehow or other get overlooked and never be imposed." Id. at 411, 200 S.E. 2d 391 (1973). I find the same situation here. The Respondent argued that if he had known he could have served is suspension earlier and it would be over. However, there is no evidence that he tried to rectify the matter.

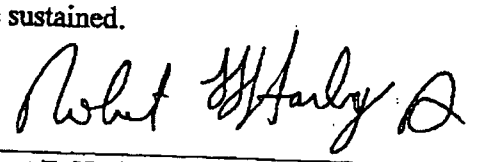
Therefore, I conclude that the relief requested by the Respondent in the regard to the suspension as a habitual offender must be denied.

ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the habitual offender suspension of Respondent's driver's license or driving privilege as a habitual offender must be sustained.

AND IT IS SO ORDERED.



Robert F. Harley, Jr.
Senior OMVH Hearing Officer

February 13, 2015
Columbia, South Carolina

FILED
FEB 13 2015
SCOMVH

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

James Winston Davis, Jr. , Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	Docket No. 15-ALJ-21-0112-AP **RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA

In The Administrative Law Court

APPEAL FROM
SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Robert Harley, Hearing Officer

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina
(803) 896-9902
Attorney for Respondent

Frank A. Barton, Esquire
P.O. Box 3972
West Columbia, SC 29171
803-739-1824
Attorney for Appellant

RECEIVED
APR 27 2015
DMV
GENERAL
COUNSEL

INDEX

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. ANDERSON, III
Director

(803) 734-3201
FAX (803) 734-3200
WWW.SCOMVH.NET

April 24, 2015

Jana Shealy, Clerk
SC Administrative Law Court
1205 Pendleton Street, Ste 224
Columbia, SC 29201

Re: S.C. Dept of Motor Vehicles
vs
James W. Davis, Jr.
SCDL/Customer NO.:8540025

Dear Ms. Shealy:

In compliance with Section 1-23-380 (d) of the 1976 Code of Laws of South Carolina, please find enclosed a certified copy of the record for the Judge's review. Please file in the appropriate case file. This is a petition for judicial review of the administrative decision, which was filed in the South Carolina Administrative Law Court.

If we can be of any further assistance, please advise.

Sincerely,

Yolanda P. Williams
Administrative Coordinator, OMVH

Cc: Frank A. Barton, Esquire
Frank L. Valenta, SCDMV General Counsel

NOA.AP.OTH
08/2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Winston Davis, Jr., Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	**NOTICE OF ASSIGNMENT** DOCKET NO. 15-ALJ-21-0112-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on March 10, 2015. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2014), the **Honorable S. Phillip Lenski,** Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, **www.scalc.net**.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the thirteenth day of March, 2015.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED
MAR 13 2015
SC ADMIN. LAW COURT

12-6606

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Motor Vehicles,	)
Petitioner,	)
vs.	)
James Davis,	)
Respondent.	)

HEARING

March 19, 2013

INDEX

1 **HEARING OFFICER:** My name is Robert Harley. I have
2 been appointed by the South Carolina Office of
3 Motor Vehicle Hearings to preside at this
4 implied -- this habitual offender suspension
5 hearing being held on the 19th of March, 2013,
6 at the Edgar A. Brown Building, Suite 325,
7 Columbia, South Carolina. For the record, the
8 petitioner in this matter, South Carolina
9 Department of Motor Vehicles, their witness is
10 not -- excuse me, is not present, but they did
11 submit documentation to support their position
12 in this matter, which will be made part of the
13 record. By statute, they're allowed to do so.
14 The respondent, Mr. James Winston Davis, is
15 present and represented by Attorney Wayne
16 Floyd. At this time, Mr. Davis, state your
17 full name.
18 **MR. DAVIS:** James Winston Davis, Jr.
19 **THE COURT:** All right. Please raise your right
20 hand. Do you solemnly swear the testimony in
21 this matter will be the truth, the whole truth,
22 and nothing but the truth?
23 **MR. DAVIS:** Yes, sir.
24 **HEARING OFFICER:** All right. And for the record,
25 the South Carolina Department of Motor Vehicles

1 issued a notice of suspension to Mr. Davis
2 informing him that his driving privilege was
3 being suspended for at least five years -- I
4 mean, at least two years up to five years based
5 upon information they received regarding his
6 driver's record -- driving history that he --
7 was set to be suspended after their
8 determination that he's a habitual traffic
9 offender. He subsequently requested an
10 administrative hearing within the time frame
11 and is now afforded an opportunity to be heard
12 regarding the Department's attempt to suspend
13 his driving privileges for at least two years
14 up to five years. And Mr. Wilson is
15 represented -- Mr. Davis is represented by
16 Attorney Floyd. Mr. Floyd?
17 **MR. FLOYD:** Thank you, Commissioner Harley. I'd
18 just like to ask Mr. Davis a few questions.
19 **THE COURT:** That's fine.
20 **JAMES DAVIS - DIRECT EXAMINATION BY MR. FLOYD:**
21 Q: Mr. Davis, have you within the last few years
22 been issued a driver's license, last few years?
23 A: Yes, sir.
24 Q: And when were you issued a driver's license?
25 A: 2010.

1 Q: And before that, did you have any driver's
2 license between the years 2005 and 2010?
3 A: No, sir.
4 Q: Now, do you recall these tickets you got back
5 in'04 and '05 --
6 A: Yes, sir.
7 Q: -- from this notice of suspension?
8 A: Yes, sir.
9 Q: Did you go to court on the tickets?
10 A: Yes, sir.
11 Q: And specifically this last ticket that we're
12 talking about to Judge Rawl's office, did you
13 appear in court (Inaudible)?
14 A: No, sir. My attorney did.
15 Q: Attorney did. And at that time, you didn't
16 have a license to surrender at that time, did
17 you?
18 A: No, sir.
19 Q: And you have not gotten any kind of license
20 between then and 2010, is that correct?
21 A: No, sir.
22 Q: Now, when you got your license in 2010, did you
23 pay all your reinstatement fees and do
24 everything the DMV told you you had to do?
25 A: Yes, sir.

1 Q: And did the DMV clear you to get a driver's
2 license at that time?
3 A: Yes, sir.
4 Q: Now, was it later suspended as a result of this
5 ticket?
6 A: Yes, sir.
7 Q: Now, if -- so basically, if the DMV had taken
8 the action back in 2006, you would have already
9 served out your five year basic offender
10 status, wouldn't you?
11 A: Yes, sir.
12 Q: And between the 2005 and 2010 or -- between
13 this ticket and 2010, did you receive any type
14 of driving offenses?
15 A: No, sir.
16 Q: And are you asking this court to allow you the
17 privilege to drive now and to rescind this
18 proposed habitual offender status that you've
19 been given?
20 A: Yes, sir.
21 Q: Do you think it's fair that this happened to
22 you some six years after the fact?
23 A: Yes, sir.
24 Q: You think it's fair?
25 A: No. No, I'm sorry. I'm nervous.

1 Q: I understand. Do you feel that the DMV has
2 waited too long to try to enforce this?
3 A: Yes, sir.
4 Q: Now, had the DMV sent you this correspondence
5 back in 2006, you could have gone and requested
6 driving privileges within two years, couldn't
7 you?
8 A: Yes, sir.
9 Q: And you didn't -- you had no violations during
10 that time, so you would have been eligible, is
11 that correct?
12 A: Yes, sir.
13 **MR. FLOYD:** That's all the questions I have now.
14 Judge, I would have a few arguments I'd like to
15 make.
16 **THE COURT:** All right. Let me ask Mr. Davis a
17 question or two.
18 **MR. DAVIS - EXAMINATION BY THE COURT:**
19 Q: My question for you is you have already talked
20 to counsel and everything and basically your
21 concern is that -- from listening to your
22 testimony is that -- and you don't deny you had
23 the violation in 2005, the one that was -- held
24 out for six years?
25 A: No, sir, I don't deny it.

1 Q: And that's -- that's -- from listening to your
2 testimony, do you feel like if the ticket was
3 sent in as it should have been, because you
4 were convicted in 2006, that you would have
5 served at least two years or more -- not quite
6 five, but you would have at least served two
7 years of that suspension period during that
8 time and you didn't have a license between 2005
9 and 2010?
10 A: No, sir.
11 Q: And for some reason, the judge did not send the
12 ticket in; it's not something that you caused
13 or that you contributed to, you were found
14 guilty of the violation and the judge's
15 responsibility to send the ticket in, am I
16 correct as far as you know?
17 A: As far as I know, yes, sir.
18 Q: Yeah, you wasn't asked to send anything in on
19 your behalf?
20 A: No, sir.
21 Q: All right. Because of that, you feel like, as
22 I indicated earlier, that you are being
23 prejudiced by the -- by the -- by the judge's
24 -- or the court's -- trying court to failure to
25 send the ticket in within a timely manner?

1 A: Yes, sir.
2 Q: And after six years, the ticket was sent in --
3 six years and five days, would be unfair to you
4 because of the suspension period being involved
5 at last two years up to five years?
6 A: Yes, sir.
7 Q: It's not like a 30 day suspension and
8 (inaudible), but we're talking about two years
9 with no driving license period?
10 A: Yes, sir.
11 Q: After being informed of that and talking with
12 counsel, you requested this hearing to
13 challenge that, right?
14 A: Yes, sir.
15 Q: Okay. That's all I have.
16 **CLOSING REMARKS:**
17 **MR. FLOYD:** Judge, we would just move that the
18 proposed habitual offender suspension be denied
19 and rescinded and Mr. Davis' privilege to drive
20 be restored. The basis of course is that as
21 he's testified to, number one, the fairness of
22 it because of the inordinate delay between the
23 ticket and the proposed action by the DMV,
24 which is through no fault of Mr. Davis. In
25 fact, I think as I put in my letter, the

1 procedure for challenging habitual offender has
2 actually changed since then. Back then you had
3 to -- you had the right to appeal to the
4 Magistrate. That's no longer the law. It's
5 now an administrative appeal. Also, would like
6 to point out that Section 15-C-540(2) provides
7 for a three year statute of limitations for any
8 type of forfeiture (Inaudible) action, which
9 we would suggest applies to the State also.
10 Furthermore, he had no license between 2005 and
11 2010, so he's actually served the five years
12 had they been timely in their notification.
13 For all these reasons, we would ask that his
14 privilege to drive be restored.
15 **THE COURT:** All right. This hearing is now closed.
16 **(There being nothing further, the hearing was**
17 **concluded.)**
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify the transcript of the hearing consists of ten (10) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this April 23, 2015.

Carenn N. Moore

Carenn N. Moore
Notary Public for South Carolina
My Commission Expires: 3/24/2019

Yolanda Williams

Transcript Request

From: Yolanda Williams
Sent: Thursday, March 19, 2015 12:56 PM
To: Creel Reporting (amanda@creelreporting.com); crystal@creelreporting.com
Subject: Transcript Request for James Davis, 12-OMVH-02-6606
Attachments: davis, james [hos]_20130319-1515_01ce24b487227a60.wma

Importance: High

Attached please find the transcript request for James Davis. Below is the contact information for the attorney that requested the transcript. If you have any question please let me know.

Frank A. Barton
Attorney at Law
P.O. Box 3972
West Columbia, SC 29171
803-739-1824

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette Autry and Tracy Holland
South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Ste 325
Columbia, SC 29201
803-734-3201
803-734-3200 fax

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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, v. James Winston Davis, Jr., Respondent,	)	Docket No. 12-OMVH-02-6606-CC **REQUEST FOR TRANSCRIPT OF RECORD**

I, Frank A. Barton, request the Transcript of Record for the case South Carolina Department of Motor Vehicles, Petitioner, v. James Winston Davis, Jr., Respondent, Docket Number 12-OMVH-02-6606-CC. The hearing in this matter was held on March 19, 2013, before the Honorable Robert F. Harley, Jr.

I understand that I am responsible for all costs associated with the preparation of this transcript pursuant to Rule 32 of the Rules of Procedure for the Administrative Law Court.

March 10, 2015
West Columbia, South Carolina

Frank A. Barton
ATTORNEY AT LAW
bartonf@hotmail.com
1611 Augusta Highway
Post Office Box 3972
West Columbia, SC 29171
(803) 739-1824 / fax (803) 739-1888

FILED
MAR 10 2015 060017

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,	)	Docket No. 12-OMVH-02-6606-CC
Petitioner,	)	**NOTICE OF APPEAL**
v.	)	
James Winston Davis, Jr.,	)	
Respondent,	)	

The Respondent James Winston Davis, Jr., does hereby appeal the Final Order and Decision issued in this action by the Honorable Robert F. Harley, Jr., Senior OMVH Hearing Officer issued on February 13, 2015. A copy of the Final Order and Decision is attached hereto. The Respondent Davis appeals on the following grounds:

a. The Hearing Officer erred in concluding the habitual offender suspension of Respondent's drivers' licenses or driving privileges must be sustained.

b. The Hearing Officer erred in concluding the habitual offender suspension was proper despite the delay of imposition of the suspension many years after Respondent's driving under suspension conviction of October 20, 2006.

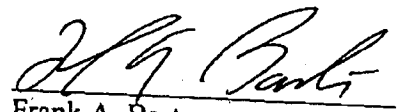
c. The Hearing Officer erred in failing to conclude the imposition of the habitual offender suspension after a delay of many years subsequent to Respondent's conviction of October 20, 2006, was a violation of Respondent Davis' due process rights as not being fundamentally fair. See, Hipp v. SC Dept Motor

FILED
MAR 10 2015 060019
SC ADMIN LAW COURT

Vehicles, 381 SC 323, 673 SE2d 416 (2009).

Respectfully submitted,

March 10, 2015
West Columbia, South Carolina



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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, v. James Winston Davis, Jr., Respondent,	Docket No. 12-OMVH-02-6606-CC **CERTIFICATE OF SERVICE**

The undersigned does hereby certify one copy of the **NOTICE OF APPEAL** was served in the foregoing action by regular mail on March 10, 2015, to the following address:

South Carolina Department of Motor Vehicles
Linda A. Grice, Assistant General Counsel
Post Office Box 1498
Blythewood, South Carolina 29016

March 10, 2015
West Columbia, S.C.

Leann F. McCormick
Leann F. McCormick
Legal Assistant to Frank A. Barton

FILED
MAR 10 2015
SC ADMIN. LAW COURT

received
2-13-15

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. James Winston Davis, Jr., Respondent.	)))))))))	Docket No. 12-OMVH-02-6606-CC **FINAL ORDER AND DECISION**

Appearances:

For the Respondent: Wayne Floyd, Esquire
For the Petitioner: by certified documents

Other Information:

Respondent's South Carolina Driver's License No.: 8540025
Type of Hearing: Habitual Traffic Offender Suspension Hearing
S. C. Code Ann. § 56-1-1020 and § 56-1-1030

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to the Respondent's request for a contested case hearing regarding the habitual offender declaration by the South Carolina Department of Motor Vehicles (Petitioner or SC DMV) pursuant to S.C. Code Ann. 56-1-1030 (Supp. 2011).

Pursuant to written notice to the parties, a hearing was held before me on March 19, 2013, in Columbia, South Carolina. The Petitioner filed certified documents in the matter but did not appear at the hearing. Pursuant to S.C. Code Ann. 1-23-660 (Supp.2011), the SCDMV is not required to appear.

After reviewing the entire record and considering all evidence, I find the habitual offender suspension of Respondent's driver's license or driving privilege must be sustained.

FINDINGS OF FACT

Having reviewed the testimony and evidence presented by the Petitioner and the Respondent and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and subject matter of the hearing was given to the parties.
2. On December 5, 2012, the Petitioner forwarded an Official Notice to the Respondent at the address it had on file. The Petitioner advised the Respondent that he had been declared a Habitual Offender and that his driver's license or driving privileges were subject to being suspended for a five (5) year period beginning January 4, 2013, and ending January 4, 2018.
3. On January 29, 2004, the Respondent was charged with Driving under Suspension (Ticket #87207CK) and was convicted on February 19, 2004. This charge was posted to the Respondent's driving record as maintained by the Petitioner on March 19, 2004.
4. On April 21, 2005, the Respondent was charged with Driving under Suspension (Ticket #81681DA) and was convicted on May 5, 2005. This charge was posted to the Respondent's driving record as maintained by the Petitioner on June 28, 2005.
5. On May 17, 2005, the Respondent was charged with Driving under Suspension (Ticket #95405CZ) and was convicted on October 20, 2006. This charge was posted to the Respondent's driving record as maintained by the Petitioner on December 5, 2012. The documents submitted into evidence seem to indicate that the ticket was first received by the SC DMV on September 22, 2011. SC DMV was unable to read some information and was unable to verify other information and it asked the Lexington County Sheriff's Department for more clarification by letter of April 20, 2012. The information was again received on October 25, 2012. It was then posted to the driving record on December 5, 2012.
6. The Respondent was charged with three (3) separate and distinct major traffic violations within a three (3) year period.

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7. The Respondent testified that he was without a license from the time of these charges until 2010. He testified that had he known he was going to serve a habitual offender suspension, he could have done it during that period.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

1. In S.C. Code Ann § 1-23-660 (Supp. 2011, the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings. Effective January 1, 2006, the Department of Motor Vehicle Hearings was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, and revocations of licenses and registrations issued by SCDMV. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).

2. All hearings presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Officer of Motor Vehicle Hearings (OMVH).

3. Pursuant to S. C. Code Ann. § 1-23-660 (Supp.2011), all appeals from final decisions of the Hearing Officers shall be to the SCALC after January 2, 2006 in accordance with its rules of procedure.

4. South Carolina Department of Motor Vehicles (SCDMV) is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws of this state. S. C. Code Ann. §56-1-5 (2006)

5. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. *See* Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a driver's license habitual offender suspension and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. *See* Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.

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6. Pursuant to S. C. Code Ann. § 56-1-1020 (2006), a conviction means a final conviction, forfeiture of bail or plea of guilty or nolo contendere.

7. Pursuant to S.C. Code Ann. § 56-1-1020 (2006), a habitual offender is any person whose record as maintained by the Petitioner shows that he has accumulated the convictions for separate and distinct offenses as defined in subsection (a), (b) and (c) committed within a three year period; provided that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes as one offense.

a. Major violations are: voluntary manslaughter, involuntary manslaughter, reckless homicide from the operating of a motor vehicle, driving under the influence, driving in a reckless manner, driving under suspension except for failure to file proof of financial responsibility; a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used and failure to stop close to the scene of accident that resulted in an injury or death.

b. Minor violations are those violations, which are required to be reported to the Petitioner in which four (4) or more points are assigned pursuant to §56-1-720.

c. Offenses include those made under federal law, law of another state, or any municipal or county ordinance of another state which substantially conforms to this statute.

d. For purpose of determining the number of convictions for separate and distinct offenses committed during any three (3) year period, a person shall be deemed to be convicted of an offense on the date the offenses were committed if he is subsequently convicted of committing such an offense.

8. The Respondent argued that the Petitioner should not be allowed to apply the October 20, 2006, conviction (Driving under Suspension, Ticket #95405CZ) because the delay between the date of conviction and the date the SC DMV posted the violation and sought to impose the suspension was too long. S.C. Code §56-7-30 provides a ticket should be forwarded to the SC DMV within ten (10) days of the conviction. I note that this code section is part of the Title 56 chapter that governs the use uniform traffic tickets in the State of South Carolina as managed by the South Carolina Department of Public Safety. The code section provides no penalty for the failure to send a ticket in the time period. There is nothing that sets forth a penalty and certainly nothing that provides that the SC DMV cannot post a conviction if it was not received within the ten days. *See* S.C. Dep't of Motor Vehicles vs. Sean Martin, Docket No. 08-ALJ-21-0091-AP

(*citing* Johnston v. S.C. Dep't. of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 293, 617 S.E.2d 363 (2005)).

However, I do recognize that the South Carolina Supreme Court has addressed this issue. In Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) the court stated that a twelve-year gap between the time of Hipp's Georgia DUI conviction and the suspension imposed by the SC DMV, denied Mr. Hipp due process because the actions were fundamentally unfair. However, in Hipp the Supreme Court did say "while we do not intend to set forth a bright line rule, we find 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." Hipp, 381 S.C. at 325, 673 S.E.2d at 417. The Court also said, "[t]hough neither dispositive nor directly applicable to the instant case, 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." Id. at 326, 673 S.E.2d at 417.

The Court cited its previous decision in State v. Chavis, 261 S.C. 408, 200 S.E. 2d 390 (1973), in which it found fundamental fairness was not violated by a suspension after a one-year delay, but allowed that there might be circumstances under which a delay would be too long. While the time period in this case lies somewhere between Chavis and Hipp, I find that the facts before me in this matter are more closely aligned to Chavis than to Hipp. First, 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. 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 suggestion of any improper conduct on the part of the Department itself. Further, the Court said, "Chavis was himself charged with knowledge of the law, and that thereunder his license was required to be suspended. There is nothing in the record to suggest that he sought, wished or desired to have the suspensions promptly ordered so that he could get them behind him. For aught the record shows, he simply kept quiet and continued to drive in the hope that his license suspensions would somehow or other get overlooked and never be imposed." Id. at 411, 200 S.E. 2d 391 (1973). I find the same situation here. The Respondent argued that if he had known he could have served is suspension earlier and it would be over. However, there is no evidence that he tried to rectify the matter.

060625

062

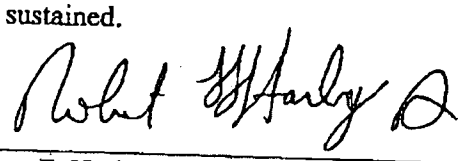
Therefore, I conclude that the relief requested by the Respondent in the regard to the suspension as a habitual offender must be denied.

ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the habitual offender suspension of Respondent's driver's license or driving privilege as a habitual offender must be sustained.

AND IT IS SO ORDERED.



Robert F. Harley, Jr.
Senior OMVH Hearing Officer

February 13, 2015
Columbia, South Carolina

FILED
FEB 13 2015
SCOMVH

000026

NOTICE

Appeal

A party may appeal this final decision by filing written notice with the South Carolina Administrative Law Court within thirty (30) days of receipt of the order to the following address:

Attn: Clerk
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

The notice must be accompanied by proof of service of the notice on all parties and a filing fee in the amount of $150.00 made payable to the South Carolina Administrative Law Court. See ALC Rules 3(A), 4(B), 31(A), 33 and 71(A). A copy of the notice must also be sent to the OMVH and a copy of the transcript shall be ordered within ten days after service of the notice. The transcript must be ordered by the Appellant and the Appellant is responsible for the cost thereof.

Motion of Reconsideration

Furthermore, a party may file a written motion with the OMVH within ten (10) days after notice of this order requesting the Hearing Officer reconsider this final decision. However, the filing of a Motion of Reconsideration does not stay the provisions of this final decision nor excuse compliance with its provisions. See OMVH Rule 15 (D). A stay must be requested specifically by motion. See OMVH Rule 15 (E). The filing of a motion for reconsideration does stay the time for an appeal until an order is issued; however, if the hearing officer does not issue a written order on the motion for reconsideration, it is deemed denied thirty days after it is filed.

Only original documents are accepted. Documents must be filed via hand-delivery or by depositing the document in the U.S. Mail, properly addressed, with sufficient first class postage attached. Facsimiles sent to the OMVH and the South Carolina Administrative Law Court do not comply with filing requirements and are not authorized. See ALC Rules 4(B).

The Rules of the Administrative Law Court are found at: www.scalc.net

The Rules of the Office of Motor Vehicle Hearings are found at: www.scomvh.net

Michelle Wash

From:	Teresa Langford <tlangford@scalc.net>
Sent:	Friday, February 13, 2015 4:19 PM
To:	HPU
Cc:	michelle@waynefloydlaw.com; wayne@waynefloydlaw.com
Subject:	James Davis Jr- 2-13-15 Final Order
Attachments:	James Davis Jr- Final order and decision, dkt#12-6606.PDF; 1 Reconsideration-appeal instructions 2011.pdf; 2-13-15 COS.pdf

Attached is a copy of the hearing officer's decision. Your client will receive additional information via mail from the DMV regarding their driving privileges.

Teresa H Langford
Scheduling Assistant
SC Administrative Law Court
Office Of Motor Vehicle Hearings
1205 Pendleton Street Suite 325
Columbia SC 29201
803-734-3203
Fax#: 803-734-3200

Nikki R. Haley
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

153-540

December 20, 2012

Yolanda P. Williams, Administrative Coordinator
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street
Suite 325
Columbia, South Carolina 29201

RE: *James Winston Davis, Jr. v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 12-OMVH-02-6606-CC
SCDL 8540025

Dear Ms. Williams:

The South Carolina Department of Motor Vehicles provides the enclosed documents for introduction into the record at the habitual offender hearing. Please file the original and return a clocked copy to me in the self-addressed envelope.

Sincerely,

Linda A. Grice
Assistant General Counsel

FILED
DEC 20 2012
SCOMVH

Enclosures: UTT 95405CZ
UTT 81681DA
UTT 87207CK
Suspension letter dated December 5, 2012
Habitual Offender warning letter dated June 28, 2005
Certified Driving Record

cc: Wayne Floyd, Esquire
Post Office Box 3972
West Columbia, SC 29171-3972

RECEIVED
DEC 27 2012
SCOMVH

Post Office Box 1498, Blythewood, South Carolina 29016

Davis
8540025

5-17-05

10-20-06

496

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Lexington — VERSUS

FIRST NAME / MIDDLE NAME / LAST NAME

STREET AND NO / CITY / STATE

STATE LICENSED / DRIVER'S LICENSE NO / DRI LIC CLASS

VEH LIC NO / STATE / NAME OF VEH / YEAR / COMM VEH / AUTO / TRUCK / COMB / HAZ MT / MOPED / MTRCYCL / OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER / STREET AND NO

DATE OF TRIAL / TIME OF TRIAL / CITY / STATE / ZIP CODE

VIOLATION / COURT APPEARANCE REQUIRED YES AND / VIOLATION SECTION NO

OWNER OF VEHICLE / DATE OF ARREST

ADDRESS OF OWNER / DATE OF VIOLATION

BAIL DEPOSITED / NAME OF ARRESTING OFFICER / RANK

DESCRIPTION OF ACCUSED / COUNTY / NUMBER

BADGE / DISTRICT

CASE BEFORE MAGISTRATE / RUN COURT / CIRCUIT COURT / FAMILY COURT / FEDERAL COURT

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE

TIME OF VIOLATION / WEATHER

DEFENDANT DID NOT APPEAR / APPEARED

DISPOSITION: GUILTY / FORFEITED BOND / PLED NOLO CONTENDERE

DISTANCE IN FEET FROM INTERSECTION OF / AND

TRIAL BY: TRIAL OFFICER / JURY

VERDICT OF TRIAL IF ANY: GUILTY / NOT GUILTY / DATE OF TRIAL IF ANY

MILES

FINE / FINE COLLECTED / FINE SUSPENDED

HWY NO / CITY

COMMITTED TO / Arrest as Result of Accident

OFFENSE CODE / BA LEVEL

CERTIFIED CORRECT / DATE

95405 CZ

TRIAL OFFICER'S COPY

Certified True Copy

Lexington Magistrate - District 1

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Driver Services

RECEIVED
SEP 22 2011
DMV
INV

RECEIVED
OCT 25 2012
DMV
INV

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

Driver Services, Legal

Nikki R. Haley
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

April 20, 2012

Lexington Sheriffs Dept
Post Office Box 639
Lexington, SC 29071-0639

C# 22955356

Re: 95405CZ

Please assist us by completing the areas noted below and returning the citation with the appropriate DL Transmittal form to our office as soon as possible since the individual's driving privilege may already be suspended after surrender of the driver license in court.

() The date of conviction is not furnished, is incorrect or is not legible. Please check this date carefully, enter correctly and return the ticket with the appropriate DL Transmittal form to our office.

(X) We are unable to determine the type of conviction. Please verify the speed, amended charge or plea to reflect the exact nature of the offense for which the individual pled or was convicted. Please write the correct information on the back of ticket, initial, and return the ticket with the attached letter to our office. **Ticket shows over. Please provide a copy of the back of the ticket.**

() We are unable to determine the disposition of the case. Either both the "guilty" and "not guilty" blocks have been marked, or it is not clear which block has been marked, or the disposition of the case have not been furnished. Please write the correct disposition on the back of the ticket, obtain the judge's initials on the ticket, and return the ticket with the appropriate DL Transmittal form to our office.

() This disposition has not been certified correct or signed by the trial judge. Please complete and return the ticket with the appropriate DL Transmittal form to our office.

() "Reckless Driving" is not a lesser offense of "Driving Under the Influence." Therefore, this ticket must be voided and rewritten to reflect a charge and conviction for "reckless driving." Resubmit ticket with the appropriate DL Transmittal form to our office.

(X) **Please verify birth date. Our records for this name and address have a different DOB.**

Thank you for your assistance in processing the above information. Please mail correspondence to SCDMV, Attention Driver Records, PO Box 1498, Blythewood, SC 29016; (803) 896-9572.

Manager,
Driver Records

Enclosure
/cab

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles

Driver Services

069032

Form S-420
REV 10-89

STATE OF SOUTH CAROLINA

UNIFORM TRAFFIC TICKET

CITY OF West Columbia VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
James	Winston	Davis

STREET AND NO	CITY	STATE
1112 B Meadow Field Rd.	Gaston	S.C. 29053

STATE LICENSED	DRIVER'S LICENSE NO	DRIVER LIC CLASS
SC	008540025	D

VEH. LIC. NO	STATE	NAME OF VEH	YEAR	COMM VEH	AUTO	TRUCK	COMB
T78BGF	SC	Chev	01	HAZ MT	MOPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER	STREET AND NO
Ebener	200 North 12th Street

DATE OF TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
05 05 2005	0900	West Columbia	S.C	29169

VIOLATION - COURT APPEARANCE REQUIRED YES NO	VIOLATION SECTION NO
DUS Driving Under Suspension	56-1-460

OWNER OF VEHICLE	DATE OF ARREST
Kenneth Tidwell	04 21 2005

ADDRESS OF OWNER	DATE OF VIOLATION
281 Hollow Creek Rd Sally SC 29137	04 21 2005

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
0 Jail	M. Wharton	PFC

DESCRIPTION OF ACCUSED

RACE	SEX	BIRTH DATE	HT	HAIR	WT	EYES
W	M	06 27 65	602	Blo	210	Bn

COUNTY	NUMBER
Lexington	32

DATE BAIL REC'D	BY	BADGE	DISTRICT
20	496	115	4

DOCKET NO

CASE BEFORE: MAGISTRATE ☐ MUN COURT ☑ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE

DAY	S 1	M 2	T 3	W 4	T 5	F 6	S 7

TIME OF VIOLATION	WEATHER
0210 AM PM	Clear

DEFENDANT DID NOT APPEAR ☐ APPEARED ☑

DISTANCE IN FEET FROM INTERSECTION: 2401

DISPOSITION: GUILTY ☑ FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐

AND Augusta Rd

TRIAL BY: TRIAL OFFICER ☑ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY / NOT GUILTY — DATE OF TRIAL IF ANY 20

MILES	N 1	E 2	S 3	W 4

JAIL	SURCHARGE	FINE	MT COLLECTED	MT SUSPENDED
30 days	47.50	570		

HWY NO	CITY
—	W Cola

COMMITTED TO	Arrest as Result of Accident	OFFENSE CODE	B A LEVEL
	NO	76	

CERTIFIED CORRECT — DATE 05 05 2005

81681DA

DRIVER'S RECORD COPY

CASE # 0507763

Bond # 647.50

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Driver Services, Department of Motor Vehicles

TR933

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

MAY 23 2005

Driver Services, Deputy Director

160034

Form S-420
REV 10-89

STATE OF SOUTH CAROLINA

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Lexington — VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
JAMES	WINSTON	DAVIS

STREET AND NO.	CITY	STATE
1112B Meadowfield Rd	Gaston	SC

STATE LICENSED	DRIVER'S LICENSE NO.	DRI LIC CLASS
SC	000854 0025	D

VEH. LIC NO.	STATE	MAKE OF VEH	YEAR	COMM VEH	PASS	TRUCK	COMB
—	—	KIA	96	HAZ MT	MOPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER	STREET AND NO.
Shockley	500 Charles East

DATE	OF	TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
02	19	2004	14:00pm	Swansea	SC	29160

VIOLATION - COURT APPEARANCE REQUIRED YES NO	VIOLATION SECTION NO.
DUS	SC-1-488

OWNER OF VEHICLE	DATE OF ARREST
McCombs - Randall	01 29 2004

ADDRESS OF OWNER	DATE OF VIOLATION
123 Sprakler Rd	01 29 2004

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
Jail	Goss	Ofc

DESCRIPTION OF ACCUSED

RACE	SEX	BIRTH DATE	HT	WGT	HAIR	EYES
W	M	06 27 65	6'2"	180	Brn	Brn

COUNTY	NUMBER
Lexington	32

DATE BAIL RECD	BY

BADGE	DISTRICT
184	4

DOCKET NO.

CASE BEFORE: MAGISTRATE ☑ MUN COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE

DAY	S 1	M 2	T 3	W 4	T 5	F 6	S 7
					8		

TIME OF VIOLATION	WEATHER
1249 AM PM	Cl

DEFENDANT DID NOT APPEAR ☑ APPEARED ☐

DISPOSITION: GUILTY ☑ FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐

DISTANCE IN FEET FROM INTERSECTION OF Sprakler AND Meadowfield

TRIAL BY: TRIAL OFFICER ☑ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ — DATE OF TRIAL IF ANY

MILES — N 1 E 2 S 3 W 4

JAIL	SUSPTC	FINE	AMT COLLECTED	AMT SUSPENDED
30		44	BW	

HWY NO.	CITY
	—

COMMITTED TO:	Arrest as Result of Accident	OFFENSE CODE	BA LEVEL
	no	96	

CERTIFIED CORRECT — DATE 02 19 2004

87207 CK

496

DRIVER'S RECORD COPY

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Driver Services

100035

FEB 23 2004

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Driver Services, Ser

South Carolina
Department of Motor Vehicles

12/05/2012

DAVIS, JAMES WINSTON JR
1112B MEADOWFIELD RD
GASTON, SC 29053-9350

CUSTOMER NO: 22955356
FILE NO: 14983348
DL NO: 8540025

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
05/17/2005	10/20/2006	95405CZ	Driving Under Suspension
04/21/2005	05/05/2005	81681DA	Driving Under Suspension
01/29/2004	02/19/2004	87207CK	Driving Under Suspension

BEGINNING DATE: 12:01 AM 01/04/2013 ENDING DATE: MIDNIGHT 01/04/2018

HEARING:
Section 56-1-1030 allows you to appeal the DMV's decision. There is a $200.00 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:
There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:
You must do one of the following for 3 years from the ending date listed above:
1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit $40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:
You must pay a $100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:
You must successfully complete the vision, knowledge and skills test.

Driver Records Manager

copy of the orig
with the South
Driver Services

South Carolina
Department of Motor Vehicles

06/28/2005

DAVIS, JAMES WINSTON JR
1112B MEADOWFIELD RD
GASTON, SC 29053-9350

CUSTOMER NO: 22955356
FILE NO: 2811750
DL NO: 8540025

Dear Customer:

This is to advise you of your present standing under the Habitual Offender Law. This law states that any person who is convicted of a minimum number of major or minor violations within a three year period will be classified as an Habitual Offender.

Our records now reveal that you have accumulated 02 major violations and 00 minor violations. Should you be convicted of any additional major or minor violations which would classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

A listing of the major and minor offenses is printed on the reverse side of this letter, and we earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina.

Driver Records Manager

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Driver Services

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 22955356
Name : DAVIS, JAMES WINSTON JR
Address : 1112B MEADOWFIELD RD
City : GASTON
County : LEXINGTON
DOB: 06/27/1965

Driver License No.: 8540025
State: SC **Zip:** 290539350
Sex: M **Driver Training:** N

Status - DL: SUSPENDED **CDL:** DISQUALIFIED

License Information

Type	Class	Function Issued	Expires	First Issued	Rest.	Endor.
Current						
DL	D	Re-exam 04/16/2010	06/27/2020	06/13/1990	N	N
Prior						
CDL	A	Returned 12/27/1996	06/27/2000	03/05/1993	N	Y
CDL	A	Renewal 12/27/1996	06/27/2000	03/05/1993	N	Y
DL	D	Returned 01/08/1993	06/27/1997	06/13/1990	N	N

Point Summary

Total Current Points: 2
Driver Credit: - 0
Adjusted Current Points: 2

VIOL: 496-Driving Under Suspension
Ticket#: 95405CZ
Violation: 05/17/2005 **Conviction:** 10/20/2006
Recd: 10/25/2012 **Post:** 12/05/2012
ACD: B26 **Conviction Loc Ref:**
Conviction Reference:
Conviction State: SC
Court Type: Magistrate Court

SUSP: 013-Driving Under Suspension
Ticket#: 95405CZ
Special Driving Privilege: NONE
Suspension Beg: 12/20/2012
Suspension End: 03/20/2013
Causal: 05/17/2005
Post: 12/05/2012
Reinstatement Requirements Met: INDEFINITE
Reinstatement Fee Paid: N
ACD: B26 **Withdrawal Loc Ref:**
Withdrawal Reason Ref:

VIOL: 441-Speeding more than 10 mph but LT 25 mph
Ticket#: 26254FS
Actual Speed: 56 **Posted Speed:** 35
Violation: 07/12/2011 **Conviction:** 08/04/2011
Recd: 08/11/2011 **Post:** 09/06/2011
ACD: S92 **Conviction Loc Ref:**
Conviction Reference:
Conviction State: SC
Court Type: Municipal Court
Violation Points: 4 **Current Points:** 2

SUSP: 036-Controlled Substance Violation
Ticket#: 11GS3201322
Special Driving Privilege: NONE
Suspension Beg: 08/23/2011
Suspension End: 04/12/2011

Certified to be true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles
Driver Services, Department

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 22955356
Name: DAVIS, JAMES WINSTON JR
Driver License No.: 8540025

Causal: 10/07/2010
Reinstatement Requirements Met: 04/12/2011
ACD: A33 **Withdrawal Loc Ref:**
Post: 08/08/2011
Withdrawal Reason Ref:

VIOL: 436-Controlled Substance Violation
Violation: 10/07/2010 **Conviction:** 07/25/2011
ACD: A33 **Conviction Loc Ref:**
Conviction State: SC
Ticket#: 11GS3201322
Recd: 08/03/2011 **Post:** 08/08/2011
Conviction Reference:
Court Type: Magistrate Court

VIOL: 436-Controlled Substance Violation
Violation: 03/01/2004 **Conviction:** 02/14/2006
ACD: A33 **Conviction Loc Ref:**
Conviction State: SC
Ticket#: 04GS322873
Recd: 03/08/2006 **Post:** 03/15/2006
Conviction Reference:
Court Type: Magistrate Court

SUSP: 036-Controlled Substance Violation
Special Driving Privilege: NONE
Suspension Beg: 02/14/2006
Causal: 03/01/2004
Reinstatement Requirements Met: 03/22/2010
ACD: A33 **Withdrawal Loc Ref:**
Ticket#: 04GS322873
Suspension End: 02/14/2007
Post: 03/15/2006
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

SUSP: 013-Driving Under Suspension
Special Driving Privilege: NONE
Suspension Beg: 05/05/2005
Causal: 04/21/2005
Reinstatement Requirements Met: 03/22/2010
ACD: B26 **Withdrawal Loc Ref:**
Ticket#: 81681DA
Suspension End: 08/05/2005
Post: 06/28/2005
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

VIOL: 496-Driving Under Suspension
Violation: 04/21/2005 **Conviction:** 05/05/2005
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC
Ticket#: 81681DA
Recd: 05/23/2005 **Post:** 06/28/2005
Conviction Reference:
Court Type: Municipal Court

SUSP: 036-Controlled Substance Violation
Special Driving Privilege: NONE
Suspension Beg: 05/20/2004
Causal: 01/29/2004
Reinstatement Requirements Met: 03/22/2010
ACD: A33 **Withdrawal Loc Ref:**
Ticket#: 87206CK
Suspension End: 11/20/2004
Post: 03/19/2004
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

VIOL: 436-Controlled Substance Violation
Violation: 01/29/2004 **Conviction:** 02/19/2004
ACD: A33 **Conviction Loc Ref:**
Conviction State: SC
Ticket#: 87206CK
Recd: 02/23/2004 **Post:** 03/19/2004
Conviction Reference:
Court Type: Magistrate Court

copy of ... true and correct ... South ... Driver Service...

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 22955356 **Driver License No.:** 8540025
Name: DAVIS, JAMES WINSTON JR

VIOL: 496-Driving Under Suspension **Ticket#:** 87207CK
Violation: 01/29/2004 **Conviction:** 02/19/2004 **Recd:** 02/23/2004 **Post:** 03/19/2004
ACD: B26 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** Magistrate Court

SUSP: 013-Driving Under Suspension **Ticket#:** 87207CK
Special Driving Privilege: NONE
Suspension Beg: 02/19/2004 **Suspension End:** 05/19/2004
Causal: 01/29/2004 **Post:** 03/19/2004
Reinstatement Requirements Met: 03/22/2010 **Reinstatement Fee Paid:** Y
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

SC Driver License/ID Surrendered **Posted:** 03/13/2006
Credential Type: CDL **Class:** A **Function:** Renewal **Issued:** 12/27/1996
Date Surrendered: 02/14/2005
Reason For Return: DL AFFIDAVIT FROM COURT **Returning State:** SC

End of Report

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Driver Services, Deputy Director

000041

078

Wayne Floyd Law Office, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972

(803) 739-1824 Email: wayne@waynefloydlaw.com Fax(803) 739-1888

December 13, 2012

HAND DELIVERED
Administrative Hearings
South Carolina Department
Of Public Safety
Edgar A Brown Building
1205 Pendleton Street, Suite 325
Columbia, S.C. 29201

RE: Name: James W. Davis, Jr.

Gentlemen:

This letter constitutes the request of the referenced individual for a hearing in connection with the action of the DMV declaring him an Habitual Offender. We also wish to appeal and request a hearing for the notice suspending him for driving him under suspension. Both of these notices are attached to this letter for your ready reference. The basis for contesting this proposed action of the DMV is the inordinate delay by the DMV in taking this action. If this action is valid and had it been taken at the time of the offenses Mr. Davis would already have his license back. It is our position that the doctrine of laches estopps the DMV from taking this action at this late date.

In fact the law concerning the appeal of a habitual offender suspension has changed and the procedure in place at the time of these offenses is no longer available, appeal to the magistrate.

It is further our position that the DMV has forfeited his right to take this action against Mr. Davis as it has issued him a license in the interim.

We reserve the right to raise any other issues at the hearing.

We have enclosed our check for $200.00 to cover the hearing fee in this matter.

Please contact me if you have any questions concerning this matter.

Sincerely,

Wayne Floyd

WF/mmw
Enclosure

cc: DMV

163042

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner,	)	Docket No. 12-OMVH-02-6606-CC DL# 8540025
vs.	)	**NOTICE OF HEARING**
James Winston Davis, Respondent.	)	

The Respondent is being represented by Attorney Wayne Floyd. This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to Respondent's request for a contested case hearing.

IT IS HEREBY NOTICED that a hearing on the merits of this action before Hearing Officer Robert F. Harley is scheduled to begin at **3:30 PM on Tuesday, March 19 2013 at Office of Motor Vehicle Hearings 1205 Pendleton Street, Suite 325 Columbia SC**. **All parties are to arrive at least fifteen minutes prior to the time set for the hearing.**

1. This hearing will be conducted in accordance with the Rules of Procedure for the South Carolina Office of Motor Vehicle Hearings (OMVH). A copy may be obtained from the Administrative Coordinator of the OMVH or from the OMVH website, **www.scomvh.net**. The South Carolina Rules of Evidence apply.

2. All parties must bring to the hearing all documents, records, and witnesses needed to present their case. **All exhibits moved for introduction at the hearing must be originals.** Upon good cause shown at the hearing, copies may be substituted for original exhibits.

3. Subpoenas are available to the parties pursuant to S.C. Code Ann. § 1-23-320(d) (as amended) and the rules of the OMVH, to compel the attendance of witnesses or for the production of documents at the hearing. The parties are responsible for service of subpoenas and any cost involved. Subpoena may be obtained from the OMVH website.

4. A party may represent himself or may be represented by an attorney at the hearing.

5. **FOR GOOD CAUSE SHOWN**, a party may request a continuance no later than two (2) business days prior to the scheduled hearing date. All requests must be made in writing and forwarded to the scheduling assistant listed below for the assigned hearing officer of the OMVH by U.S. Mail, Fax, or email. A copy of your request must be sent to all parties.

6. In case a party settles a case or wishes to withdraw their request for a hearing, they must notify the scheduling assistant of the OMVH as soon as possible. If in the event you cannot reach the scheduling assistant then contact the Administrative Coordinator as soon as possible at (803) 734-3201.

Yolanda P. Williams, Administrative Coordinator, OMVH

By: *Frances L Inabinet*

Scheduling Assistant

December 17, 2012
Columbia, South Carolina

062043

Teresa Langford

From: Teresa Langford
Sent: Monday, December 17, 2012 12:16 PM
To: 'hpu@scdmv.net'; michelle@waynefloydlaw.com; wayne@waynefloydlaw.com
Subject: James Davis Jr- Hearing Notice
Attachments: James Davis Jr, Notice of hearing, 3-19-13, dkt#12-6606.pdf

Teresa H Langford
Scheduling Assistant
SC Administrative Law Court
Office Of Motor Vehicle Hearings
1205 Pendleton Street Suite 325
Columbia SC 29201
803-734-3203
Fax#: 803-734-3200

000144

081

Cash Receipt

Number:	CR1212-0262	**Dated:**	12-13-2012
Till:	OMVH Till	**Total Paid**	$200.00
Posted:	Yes		

Void Information

Void Method:		**Voided:**	No
Void Posted:	No		
Void Explanation:			

Generate

Cash Receipt | Generate

Invoices (1)

Date	Number	Item Type	Customer	Paid
12-13-2012	NV 212-0259	Case Filing Fee - $200	Davis, James Winston, Jr.	200.00

Payments (1)

Payment Method	Reference	Paid
Check	Wayne Floyd Law Office	200.00

Nikki R. Haley
Governor

2012-OMVH-02 -

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

12/05/2012

DAVIS, JAMES WINSTON JR
1112B MEADOWFIELD RD
GASTON, SC 29053-9350

CUSTOMER NO: 22955356
FILE NO: 14983348
DL NO: 8540025

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
05/17/2005	10/20/2006	95405CZ	Driving Under Suspension
04/21/2005	05/05/2005	81681DA	Driving Under Suspension
01/29/2004	02/19/2004	87207CK	Driving Under Suspension

BEGINNING DATE: 12:01 AM 01/04/2013 ENDING DATE: MIDNIGHT 01/04/2018

HEARING:
Section 56-1-1030 allows you to appeal the DMV's decision. There is a $200.00 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:
There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:
You must do one of the following for 3 years from the ending date listed above:
1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit $40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:
You must pay a $100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:
You must successfully complete the vision, knowledge and skills test.

Driver Records Manager

RECEIVED
DEC 13 2012
SCOMVH

FILED
DEC 13 2012
SCOMVH

Nikki R. Haley
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

12/05/2012

DAVIS, JAMES WINSTON JR
1112B MEADOWFIELD RD
GASTON, SC 29053-9350

CUSTOMER NO: 22955356
FILE NO: 14983347
DL NO: 8540025

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below:

SECTION OF LAW: 56-1-460

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
05/17/2005	10/20/2006	95405CZ	Driving Under Suspension

BEGINNING DATE: 12:01 AM 12/20/2012 ENDING DATE: MIDNIGHT 03/20/2013

SPECIAL DRIVING PRIVILEGES:
If your violation date is on or after 1/1/11, the following may apply. You may be eligible for a route restricted license if you are a licensed driver, a US Citizen, have a job, attend ADSAP, attend a court-ordered drug program or are enrolled in a college or university. This license allows you to drive non-commercial motor vehicles on a specific route at a certain time during this suspension period. Complete the enclosed application and return it to the DMV Customer Service Office at 1630 Shop Road, Columbia, SC or mail it to Driver Records, PO Box 1498, Blythewood, SC 29016-0028. There is a $100.00 fee for this license. Incomplete applications will be returned. If you do not receive special driving privileges, the suspension will become effective on the date indicated above and you must surrender your driver's license to your local DMV Office. If you are holding a valid license from another state, you may make application for a route restricted license without surrendering your out-of-state license to the SCDMV. If approved, this credential must be kept in your possession with the out-of-state license during the suspension period.

FINANCIAL RESPONSIBILITY:
You must do one of the following for 3 years from the ending date listed above:
1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit $40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:
You must pay a $100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Tests:
You must successfully complete the vision test.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

If you have not already turned in your license, you must return it to Driver Records or your local DMV office.

Driver Records Manager

069047

RECEIVED
NOV 09 2015
SC Court of Appeals

Certificate of Service

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage aid, or in the interagency Mail Service addressed to the party (ies) or their attorney(s).

This 4th day of April 2015

By: [signature]

Title: **Administrative Coordinator, OMVH**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 09 2015
SC 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,

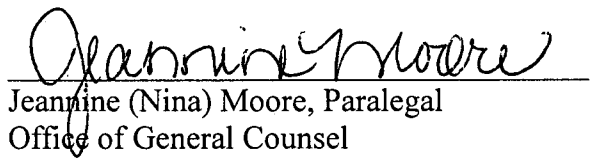
v.

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

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:

Frank A. Barton, Esquire
H. Wayne Floyd, Esquire
Post Office Box 3972
West Columbia, South Carolina 29170



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Blythewood, SC