STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County
In the Court of Common Pleas

Hon. L. Casey Manning, Circuit Court Judge

Appellate Case No. ~~2015-000887~~ 2017-000797

Anna Dillard Wilson.....Respondent,

v.

South Carolina Department of Motor Vehicles.....Petitioner

RETURN TO PETITION FOR CERTIORARI

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STATEMENT OF FACTS

On November 22nd, 2008, the respondent, Anna D. Wilson, was charged by the Irmo Police Department with driving under the influence of alcohol. On June 11th, 2009 Mrs. Wilson pled guilty to the charge in the Irmo Municipal Court.

Following her conviction she duly paid the fine and enrolled in ADSAP, successfully completing it. In August, 2009 she contacted the Department of Motor Vehicles to obtain a restricted license. The DMV informed her there was no such conviction. She then contacted the Irmo Town Clerk to check on the status, and was told that the citation had been sent to the DMV. She contacted her insurance agent, who also went to the DMV to inquire about the status, and was likewise told no conviction for DUI existed on Mrs. Wilson's record.

Five years later, Mrs. Wilson was notified by the DMV that her license was now suspended for the DUI conviction. Mrs. Wilson brought an action to enjoin the DMV from now suspending her license after the passage of five years. The circuit court entered the injunction on March 23rd, 2015, permanently enjoining the department from suspending her license. The South Carolina Court of Appeals affirmed the trial court. The S.C. Department of Motor Vehicles now seeks discretionary review by this Court.

I. There was a sufficient showing of prejudice to Mrs. Wilson owing to the five-year delay in suspending her license to drive in South Carolina to require the suspension be enjoined.

This Court has previously addressed whether the due process clause of the U.S. Constitution and principles of fundamental fairness may justify an injunction prohibiting suspension of a motorist's driver's license after a substantial delay between conviction requiring suspension and the imposition of the suspension itself.

In *Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009), this Court was presented with a 12-year delay between Mr. Hipp's guilty plea to driving under the influence in Georgia, and the subsequent imposition of suspension of his license in South Carolina by the Department of Motor Vehicles.

This Court found that such a lapse of time violated the principle of fundamental fairness required by due process of law. The Court did not establish a "bright line rule" with which to determine whether an unreasonable delay amounted to such a violation, but noted in its opinion, though not dispositive, that South Carolina's statutory scheme regarding sentence enhancements and records of driving convictions routinely referenced a ten year limit. *Id*, 381 S.C. 325-326. 673 S.E.2d 417.

Hipp references *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973), where there was 14-month delay between Mr. Chavis' refusal to submit to a breathalyzer test, and his subsequent conviction for driving under the influence, together with the suspension of his license for two three month periods as a consequence. This Court held that such a delay was not so prejudicial to Mr. Chavis as to justify estoppel of the suspension. In *Hipp*, however, the court noted that a lengthy delay constituting a denial of due process was contemplated by *Chavis*, and *Hipp* was such a case.

The Department of Motor Vehicles challenges the prejudice which may inure to Mrs. Wilson with the imposition of a suspension now. Here is the finding of the Court of Appeals, based on the record in the trial court.

> Upon our review, we note the record contains evidence of specific injuries and prejudice, which were absent in *Chavis,* that Wilson believed would result from a suspension five years after her conviction... Wilson testified she lost her job after her DUI arrest, and it took her two years to find new employment as an office manager. Wilson also stated that, as part of her new job, she is required to travel on behalf of the

> company, and a suspension of her driver's license may cause her to lose her current job. According to Wilson, losing her current job would cause severe economic hardship because she has two mortgage payments and would not have a steady stream of income to make these payments. Based on her statements, we find Wilson demonstrated a high likelihood of injury or potential prejudice if her driver's license is suspended.

The department claims that these injuries are speculative. See Petition at p. 10. As Mrs. Wilson said at the hearing before the trial court, that was "an awfully big risk to take," and not one for the department to minimize. [ROA. p. 67, l. 12-20.] Moreover, the Court of Appeals found, based on Mrs. Wilson's unrebutted testimony, that the likelihood of injury was "high."

As a part of its argument, the department claims that Mrs. Wilson had "unclean hands" which should deprive her of equitable relief. The department claims Mrs. Wilson should have undertaken more steps than she did in securing her own suspension. Yet as the Court of Appeals points out, Mrs. Wilson went to the department after completing ADSAP to obtain a restricted license, then went to the Irmo Police Department to verify the status of the citation after being told there was no conviction, and even sent her insurance agent to the department to check on the status of the conviction and verify insurance requirements. All this in an effort by Mrs. Wilson to secure compliance with suspension requirements. Hence, as the Court of Appeals pointed out, this was in stark contrast to Mr. Chavis, who hoped to avoid his suspension by stealth.[1]

Mrs. Wilson has shown the requisite likelihood of prejudice resulting from the inordinate five-year delay between her conviction and the imposition of a suspension of her license to drive in South Carolina. The opinion of the Court of Appeals correctly applied the prior decisions of this court, and this petition presents no novel question of law unaddressed by the previous decisions of this court. *See*, S.C. Appellate Court Rule 242(b)(1)&(3).

[1] The department also argues Mrs. Wilson should have had her attorney undertake to have her license suspended. Petition at p. 8, fn. 7. Her attorney owes a duty to her, not the Department of Motor Vehicles.

II. The Court of Appeals correctly applied the law in finding that Mrs. Wilson was deprived of the due process of law by the delay in suspending her license to drive after her conviction five years later.

This Court has held that an inordinate delay in suspending a citizen's license to drive in this state after a conviction triggering the suspension may violate that citizen's right to due process of law and fundamental fairness. *Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, __ (2009).

The U.S. Supreme Court recognized that the "continued possession" of a license to drive a motor vehicle "...may become essential in the pursuit of a livelihood," requiring due process of law in a state's action to deprive the driver of it. *Bell v. Burson*, 402 U.S. 535 (1971), at 539. This Court does as well. *See, id.*

That is precisely what is at stake for Mrs. Wilson here, and she has shown the requisite prejudice justifying a prohibition on the state now suspending her license.

The department goes to great lengths to plead that it was not at fault for the delay in the suspension, and that it promptly suspended the license once notified by the Irmo Police Department. But as this Court has held in *Hipp* it is immaterial that neither the department nor the driver were "at fault" in the delay; it only mattered that the delay occurred, due to the failure of the Georgia law enforcement agency to report it. *Id*, at 381 S.C. 323, 326, 673 S.E.2d 416, 417, fn. 2. Hence, it is not blameworthiness but hardship as a result of government prorogation which violates due process.[2]

[2] The department also argues that laches does not apply here. Mrs. Wilson has never argued that it does.

The department cites a number of decisions from other jurisdictions as examples of suspensions upheld despite the passage of time. As the Court of Appeals pointed out in its decision, at fn. 3, these cases are distinguishable and involve delays ranging from 13 months to three and a half years. This was a five year lapse. What's more, one decision cited by the department held that a three-year delay was unreasonable as a matter of law. *See*, *In Re Petition of Donley*, 217 W.Va. 449, 618 S.E.2d 458 (2005). While this Court in *Hipp* did not set forth a bright line rule regarding the length of delay justifying a prohibition on suspension, this would certainly lend itself to such a rule.

The department argued on appeal, and not at trial, that Mrs. Wilson came to the circuit court with unclean hands. Not only is this not supported by the record, it is unpreserved for review, as the Court of Appeals points out. Furthermore, the department contends that Mrs. Wilson has another adequate remedy. That remedy consists of an onerous interlock system on her vehicle, subjecting her to penalties in addition to other conditions of a provisional driver's license. This is hardly a remedy and in any event, it was not raised until late in this appeal, in the department's brief in reply. Finally, the department argues Mrs. Wilson that prejudice to her as a result of delay is alleviated by her ability now with the availability of the interlock system. This hardly mitigates hardship to her, and was not raised in the circuit court in any event.

CONCLUSION

The South Carolina Court of Appeals correctly applied the law of this state to uphold the imposition of an injunction prohibiting the S.C. Department of Motor Vehicles from suspending Mrs. Wilson's driver's license after a five year delay between her conviction and the suspension. Hence this petition presents no novel question of law unaddressed by the previous decisions of this court, and should be dismissed. *See*, S.C. Appellate Court Rule 242(b)(1)&(3).

Respectfully submitted,

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April 26th, 2017

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CERTIFICATE OF SERVICE

Counsel certifies that the Reply of the Respondent in this case was served on all parties by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows, on the 26th day of April, 2017:

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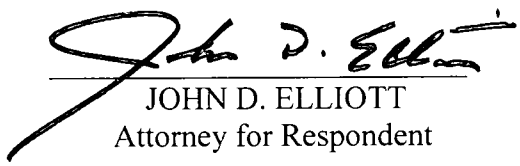

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