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**The State of South Carolina  
In the Court of Appeals**

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IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT  
S. Phillip Lenski, Administrative Law Judge

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Case No. 2009-000389

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INITIAL BRIEF

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ALIEO GARGA-RICHARDSON

Appellant (Pro-Se)

v

SOUTH CAROLINA DEPARTMENT OF  
PROBATION, PARDON AND PAROLE  
SERVICES AND THE SOUTH CAROLINA  
DEPARTMENT OF MOTOR VEHICLES

Respondent

**RECEIVED**

APR 08 2019

SC Court of Appeals

**The Honorable S. Philip Lenski  
Administrative Law Judge  
1205 Pendleton Street, Suite 224  
Columbia, South Carolina 29201  
803-734-0550**

**Mr. Thomas W. Nicholson (Esquire)  
Attorney at Law  
P. O. Box 50666  
Columbia, SC 29250  
803-734-9220**

**Mr. Frank L. Valenta (Esquire)  
Office of General Counsel  
P. O. Box 1498  
Blythewood, SC 29016  
803-895-9902**

**Office of Motor Vehicle Hearings  
1205 Pendleton Street, suite 325  
Columbia, SC 29201**

**STATEMENT OF ISSUES ON APPEAL****RECEIVED**

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SC Court of Appeals

In my brief to the Administrative Law Court, I asked the court to decide on the following issues.

1. After serving my suspension imposed by the Department of Motor Vehicle, was I under law, obligated to have the Breathalyzer Installed in my car?
2. Does the Department of Probation, Parole and Pardon Services has the authority to request inspections?
3. Did the Department of Probation, Parole and Pardon Services have the right to assessed IID Points against me after my program completion date?

These were the issues that concerned me at the time and I thought they were specific to my case. However, the issues in this matter can be summed up in point # 3 as stated above.

And this is the Issue I would like the Court to decide.

## STATEMENT OF THE CASE

1. In September of 2012, I was arrested and charged with Driving Under the Influence of
2. Alcohol. In November of 2012, I pleaded guilty to Driving Under the Influence 1<sup>st</sup>. My
3. Driving Privilege was suspended by the Department of Motor Vehicle for two years.
4. After serving my suspension, I went to the Department of Motor Vehicles to have my
5. driving privilege restored and my license reinstated. Before going to the DMV office, I
6. made a phone call to the DMV stating my intentions. I was then informed that I had to
7. have a breathalyzer installed in any vehicle that I own and intended to drive. I was given
8. a number and told to call to make arrangement. I did and was instructed to look up any
9. place that carried the equipment and get it installed. I follow these instructions, had the
10. breathalyzer installed in the vehicle that I own at the time; had the vehicle registered;
11. did a road test pay the reinstatement fees and was issued a license.
12. The agreement for the Breathalyzer was signed with Guardian Interlock Services for a
13. period of two years. The two years period ran from May 2015 to May 2017.
14. During this time, I was required to have an inspection of the Device every 30 days which
15. I comply with until the final inspection which was done in May of 2017.
16. In June of 2017, I received a letter from the Department of Probation, Parole and
17. Pardon Services stating that I should take my vehicle for inspection. This was not what
18. I had hope to receive, I expected to receive a letter telling me to go and have the device
19. Removed from my vehicle. Well, I said to myself, this must be a mistake because I had
20. completed the program and was hoping that I could have the device returned and be

21. done with the Department of Probation, Parole and Pardon Services. But this did not  
22. happened. I received a second letter informing me that I missed an inspection and a  
23. IID point was assessed against me ( reference section one of the records on appeal,  
24. letter from the Department of Probation, Parole and Pardon Services dated July 10  
25. 2017). In September of 2017, I received another letter stating that I missed another  
26. inspection and an IID point against me and my participation in the program had been  
27. extended for two months ( reference section one of the records on appeal, letter  
28. from the Department of Probation, Parole and Pardon Services dated September 06  
29. 2017). And Then subsequently a third and a fourth point were assessed. Honestly  
30. I had intended to respond to the letter dated November 6, 2017 but must have  
31. forgotten about it because of work requirement. In my letter of appeal to the Office  
32. of Motor Vehicle Hearings, I honestly did not remember ever receiving this letter and  
33. so testified at the hearing.

34. But, at the hearing issues I wanted heard was not and the Hearing Officer Mr. Phillip  
35. Addington render a judgement in favor of the Department of Probation, Parole and  
36. Pardon Services.

The Issue I wanted heard pertains to Issue # 3 as stated in my 'Statement of Issues on Appeal'.

However, I then filed an appealed with the Administrative Law Court. Judge S. Philip Linski presided.

On January 10<sup>th</sup>, 2019 the Honorable S. Philip Lenski affirmed the decision of the Office of Motor Vehicle Hearings (OMVH).

On January 21<sup>th</sup>, 2019 I filed a motion for Reconsideration of his Order. A copy of this motion is included with this statement.

On February 6<sup>th</sup>, 2019 an order denying my Motion for reconsideration was entered.

## **STANDRAD OF REVIEW**

**I am not an Attorney and is therefore proceeding in this matter on a Pro-Se basis. Not because I choose to, but because I can't find an attorney who is willing to represent me.**

**The Standard of review I seek is that The Appellate Court review this matter on a "de novo" basis.**

## ARGUMENT

The Argument in this matter is the same filed with the Administrative Law Court for reconsideration; which was denied.

Your Honorable Body;

I begin this argument for a review of the decision of the Administrative Law Court, presided over by Judge S. Philip Lenski by stating that I am not an attorney and am proceeding in this matter purely on a Pro-Se basis. In so stating, I pray that the assimilation of points so stated may provide a clear understanding of the matter before This Appellate Court and guide you to a lawful and just conclusion.

1. I begin with page # 1 of the Order affirming the ruling of the Office of Motor Vehicle Hearings beginning with reference to the footnote. And I paraphrase ... 'The appellant asserts that he is also appealing the assessment of three (3) ignition interlock device points, However, pursuant to SC code 56-5-2941(H)(5) "a person may appeal less than four (4) ignition interlock device points received to an administrative hearing officer with The Department of Probation Parole and Pardon Service (PPP) through a process established by ....
2. The statue was misquoted ....SC 56-5-2941(H)(6) does state .... "A person MAY appeal less than four ignition interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer's decision on appeal is final and no appeal from such decision is allowed."

The Order goes on to say ... "Therefore that issue is not properly before this court and this order only addresses the suspension of the Appellant's license for the assessment of four (4) or more ignition interlock points."

### MY DISAGREEMENT

1. Had I appeal the three (3) IID points with the Department of Probation, Pardon and Parole Hearing Officer, I would have lost the right to be heard if I disagree with his findings which would have been a violation of my due process right as guaranteed by the Constitution of these United States.
2. The Issue of weather The Department of Probation, Parole and Pardon Services was acting lawfully was unsettled

3. South Carolina Statue SC 56-5-2941(H)(6) states that a person MAY appeal .... Which indicates an option. And Judge Lanski ruling is denying me of that option.

On page two (2) of the ORDER, paragraph one (1), second sentence;

1. "On May 22<sup>nd</sup>, 2017, the Department sent the Appellant a letter requesting that he take his IID in for a final inspection before the IID could be remove from his vehicle"

This is FACTUALLY INCORRECT;

The letter referred to was never introduced at the OMVH HEARING nor was one ever included in the RECORDS ON APPEAL. Please refer to Exhibit # 6 of the Records on Appeal.

With reference to paragraph 3, on page two (2) of the ORDER, sentence number 2;

1. "Absent a final inspection report which would have resulted in the removal of the device, the appellant was statutorily required to continue having an IID inspection every sixty (60) days."

The Statue that required my participation was never quoted. However, SC code 56-1-400 does set forth the time requirement for my participation in the program.

The Department of Probation, Parole and Pardon Services did not established its statutory authority to request a final inspection, but instead relied upon a STANDARD OF REVIEW that was adopted by the Administrative Law Judge.

South Carolina Code laws, section 1-23-40 clearly states these requirements

**SECTION 1-23-40.** Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

The Department is required by statute to make these regulations public.

**SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.**

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

- (1) That it was duly issued, prescribed or promulgated subject to further action required under this article
- (2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;
- (3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

## **CONCLUSION**

**In conclusion, The Department of Probation, Parole and Pardon Services does not have the authority to request a final inspection. The Department of Motor Vehicle should have been aware of this.**

**The Administrative Law Court inexcusably should not have affirmed the decision of the Office of Motor Vehicle Hearings without these findings.**

**I seek the reinstatement of my driving privileges and punitive damages for the violation of my civil rights under the color of Law.**

**PROOF OF SERVICE**

April 9<sup>th</sup>, 2019

I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail with sufficient postage affixed, copies of my Initial Brief addressed to;

The Honorable S. Philip Lenski  
Administrative Law Judge  
1205 Pendleton Street, Suite 224  
Columbia, South Carolina 29201  
803-734-0550

Mr. Thomas W. Nicholson (Esquire)  
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SC Court of Appeals

Sincerely,

  
Alieo Garga-Richardson

Appellant Pro-Se  
1435 Ebinport Rd.  
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803-389-4456

[Agargarichardson@yahoo.com](mailto:Agargarichardson@yahoo.com)

April 8<sup>th</sup>, 2019

Mrs. Jenny A. Kitching  
Clerk  
South Carolina Court of Appeals

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SC Court of Appeals

Dear Mrs. Kitching,

I could not complete printing of My Initial Brief before the post office close today.

Therefore, I am sending it by Fax in order that it not be deemed as late. Please excuse this untimely event.

Sincerely,



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