The State of South Carolina
In the Court of Appeals

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

Case No. 2009-000389

REPLY BRIEF

RECEIVED
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SC Court of Appeals

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

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STATEMENT OF ISSUES IN THESE PROCEEDINGS

I begin this reply brief with the following observations. Throughout these proceedings, the department of Probation, Parole and Pardon Services, through its represented Counsel Mr. Thomas W. Nicholson (Esquire), has continually misstated my positions on issue raised in this Contested Case Hearing. Case in point;

1) In the Designation of Matter submitted by Counsel, I am declared as the Respondent.

2) The Issue I presented in my Initial Brief was not addressed.

3) The Transcript does not accurately reflect the proceedings.

ISSUE # 1

In the Designation of Matter submitted by Counsel, Alieo Garga-Richardson is designated as Respondent and proposes that the Transcript Dated April 3rd 2018 and pages 45, 46 and 47 be included in the Records. I have no objections to the inclusion of these documents in the Records except that I am not the one making such proposal.

The Issue presented in my Initial Brief was not addressed; however, I would like to address the issue raised by Counsel in his Respond Brief which he titled "initial Brief".

The Standard of Review; Counsel contends that my request for a de novo review was incorrect. However SC code 1-23-380 does state;

HISTORY: 1977 Act No. 176, Art. II, Section 7.

SECTION 1-23-380. Judicial review upon exhaustion of administrative remedies.

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 pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the

South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

(5) 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.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

Effect of Amendment

The 2006 amendment rewrote this section to provide for review by an administrative law judge and appeal to the South Carolina Court of Appeals.

The 2008 amendment deleted subsection (B) relating to review by an administrative law judge of a final decision in a contested case; deleted the designation of the first paragraph as subsection (A) and at the end of the first sentence substituted "pursuant to this article and Article 1" for "under this article, Article 1, and Article 5"; in paragraph (1) deleted ", the Administrative Law Court," following "agency"; in the fourth sentence of paragraph (2) deleted "or administrative law judge" following "agency"; and in the second sentence of paragraph (4) deleted "or the Administrative Law Court" following "agency" in two places.

DID THE RESPONDENT PROPERLY ASSESS A MISSED INSPECTION POINT AGAINST APPELLANT?

With reference to my respond brief in the proceedings with the Administrative Law Court page

3 lines 1 – 3; I asked, with my license suspended for 3 IID points, how do you justify a fourth point?

In his brief, Counsel stated several times that the IID program was one in which participant voluntarily participated and could therefore terminate his/her participation at will. No reference made to any SCDPPP rules.

During my participation in the program, I was not aware of this. Neither was I made aware after I received the 3rd IID point. I only became aware of this by mail after the 4-point assessment and consequent suspension which I immediately accepted and had the device removed.

ISSUE # 2

The issue presented in my initial brief was not addressed instead Counsel defends the actions of the Department of Probation, Parole and Pardon Services by referring to a mandate and the intentions of the General Assembly.

In the matter of McNickels's Inc. v. S. C. Dept. of Revenue.

While the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board "to fill up the details" by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. *Heyward v. South Carolina Tax Comm'n*, 240'S.C. 347, 126 S.E.2d 15 (1962). An administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation. *Hunter & Walden Co. v. South Carolina State Licensing Bd. for Contractors*, 272 S.C. 211, 251 S.E.2d 186 (1978). Although a regulation has the force of law, it must fall when it alters or adds to a statute. *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984). A rule may only implement the law. *Banks v. Batesburg Hauling Co.*, 202 S.C. 273, 24 S.E.2d 496 (1943).

With regard to the requirement of a final inspection by the Department of Probation, Parole and Pardon Services, the final inspection is not conducted until the end of the participant's statutory end date. In my case, that occurred on May 22, 2017. And therefore added additional time to my participation in the program.

S. C. Code 56-5-2990(3) States;

(3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for two years.

Counsel also acclaims that in the State of South Carolina,

Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency' s interpretation of the statute.

But, here the intent of the General Assembly is clarified by enacting

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.

And

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.

SECTION 1-23-70. Duty of Attorney General.

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

ISSUE # 3

When I ordered the transcript from the OMVH hearing, I was mailed a CD and told I had to find a Transcriber. One was located on - line and they sent me a link to upload the CD. A couple of days later, I received a call from them stating that they were having problems understanding what was being said on the CD and wanted to know if I could send them original I had in my possession. I told them that I would like to keep the original but would request an additional copy. I contacted the office and was told to have the company contact them which I relayed. When the transcript arrived, I was just about out of time to have it file; I did not check it for accuracy. Not until recently, in preparation for this Reply Brief .... Some of what is mentioned and attributed to me are not true. In one instance, page 40, line 14 – 17.

CONCLUSION

In view of the foregoing, I request a DE NOVO review and pray that the Almighty guide you in your decision making.

With Kindest Regards,

I remain

Sincerely,

Alieo Garga-Richardson
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cc: The Honorable S. Philip Lenski
Mr. Thomas W. Nicholson (Esquire)
Mr. Frank L. Valenta (Esquire)
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PROOF OF SERVICE

May 13th, 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 Reply Brief addressed to;

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