

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

3
4 **IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT**
5 **S. Phillip Lenski, Administrative Law Judge**

6
7 **Case No. 2009-000389**

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10 **FINAL BRIEF**

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SC Court of Appeals

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15 **ALIEO GARGA-RICHARDSON**

16 **Appellant (Pro-Se)**

17 **v**

18 **SOUTH CAROLINA DEPARTMENT OF**
19 **PROBATION, PARDON AND PAROLE**
20 **SERVICES AND THE SOUTH CAROLINA**
21 **DEPARTMENT OF MOTOR VEHICLES**

22 **Respondent**

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

**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 the 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**

PREFACE TO FINAL BRIEF

THIS PREFACE TO THE APPELLANT'S FINAL BRIEF IS INCLUDED TO PROVIDE AN UNDERSTANDING OF THE TABLE OF CONTENTS.

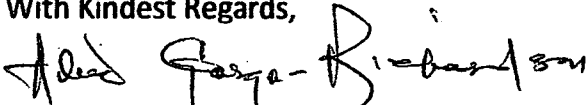
The contents of the brief are arranged in sections; beginning with the Table of Contents and ending with the Proof of service.

I was unable to insert consecutive numbering in the brief and therefore apologize for my inability to do so.

The Table of Contents states the number of pages in each section. The pages are numbered in a section.

I pray that this provides ready referencing without any confusions.

With Kindest Regards,

A handwritten signature in black ink that reads "Alieo Garga-Richardson". The signature is written in a cursive style with some capital letters.

Alieo Garga-Richardson (Appellant Pro-Se)

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

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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.

STATEMENT OF ISSUES ON APPEAL

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

1. **After serving the 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 think they are 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 Alcohol.
2. In November of 2012, I pleaded guilty to the charge of Driving Under the Influence 1st Offense.
3. My driving privileges were suspended by the Department of Motor Vehicles for two years.
4. After serving my suspension, I went to the Department of Motor Vehicles to have my driving privileges restored and my license reinstated.
5. But, before going to the DMV Office, I made a phone call to the DMV stating my intentions.
6. I was informed that I had to have a breathalyzer installed in any vehicle that I own and intended to drive.
7. I was given the number to the Department of Probation, Parole and Pardon Services and told to call and inquire about having a breathalyzer installed before making an appointment for a license.
8. I called the Department of Probation, Parole and Pardon Services and was transferred by the person who answered my call to the section that administers the Breathalyzer program.
9. I was instructed to look up a place that carried the equipment and have it installed. I followed the instructions; had the breathalyzer installed in the vehicle that I owned at the time; had the vehicle registered, did a road test, paid the reinstatement fees and was issued a license.
10. I signed an agreement with the Guardian Interlock Services in May of 2015 which expired in May of 2017.
11. I was informed by the provider that installed the Breathalyzer that I had to have it inspected ever 30 days which I complied with to include a final inspection which was done in May of 2017.
12. In June of 2017, I received a letter for the Department of Probation, Pardon and Parole Services stating that I should take my vehicle in for an Inspection.
13. This was not what I had hoped to receive. I expected to receive a letter from the Department informing me to take my vehicle to have the breathalyzer removed.
14. Well, I said to myself, this must be a mistake because I had completed the program and was hoping that I could returned the device and be done with the Department of Probation, Parole and Pardon Services.
15. But this did not happen. Instead, I received a second letter informing me that I missed an inspection and an IID point was assessed against me (reference section one of the records on appeal, page 001).

16. In September of 2017, I received another letter stating that I missed another inspection and an IID point had been assessed against me and that my participation in the program had been extended for two months (reference section on of the records on appeal page 003).
17. And then subsequently, a third and a fourth point were assessed. Honestly, I had intended to respond to the letter dated November 2017 but forgot due to my work load.
18. In my letter of appeal to the Office of Motor Vehicle Hearings, I honestly did not remember ever receiving this letter and so testified at the hearing.
19. Also, at the hearing, issues I wanted heard was not and the Hearing Officer, Mr. Phillip Addington render a judgement in favor of the Department of probation, Parole and Pardon Services.
20. The Issue I wanted heard pertains to Issue # 3 as stated in my 'statement of Issues on Appeal'.
21. However, I then filed an appeal with the Administrative Law Court. Judge S. Philip Linski Presided.
22. On January 10th, 2019, the Honorable S. Philip Lenski affirmed the decision of the Office of Motor Vehicle Hearings (OMVH).
23. On January 21th, 2019, I filed a motion for Reconsideration of his Order. A copy of this motion is included in the Records on Appeal page 144.
24. On February 6th, 2019, an order denying my Motion for reconsideration was entered.

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 (page 138 of the Records on appeal). 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 misquotedSC 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 Lenski ruling is denying me of that option.

On page two (2) of the ORDER, paragraph one (1), second sentence (Page 139 of the Records on appeal);

1. "On May 22nd, 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 (Page 137X of the records on Appeal).

With reference to paragraph 3, on page two (2) of the ORDER, sentence number 2 (Page 139 of the Records on Appeal);

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 after the end of my program 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 establish its statutory authority to request a final inspection, but instead relied upon a STANDARD OF REVIEW that was adopted by the Administrative Law Judge.

The South Carolina Code laws, section 1-23-40 clearly states the requirements for a regulation to be effective as law.

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 right to assessed IID points after my program completion date). 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 compensatory and punitive damages for the violation of my civil rights under the color of Law.

Dated this 8th day April 2019

Sincerely,



Alieo Garga-Richardson (Appellant Pro-Se)

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com