

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

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| FERNANDO DELEON-LOPEZ |) | C.A. No. CPU6-10-001656 |
| |) | |
| Appellant, |) | |
| |) | C.A. No. CPU6-10-001655 |
| RAMON PEREZ, |) | |
| |) | |
| Appellant, |) | |
| v. |) | |
| |) | |
| JENNIFER COHAN, |) | |
| DIRECTOR, DIVISION OF |) | |
| MOTOR VEHICLES |) | |
| |) | |
| Appellee. |) | |

Submitted: November 7, 2011
Decided: January 4, 2012

William Chasanov, Esq., Attorney for separate Appellants
Frederick Schranck, Esq., Attorney for Appellee.

DECISION ON APPEAL

CLARK, J.

Facts

In early 2009, the Delaware Division of Motor Vehicles purchased and began running facial recognition software, to detect system errors and identify cases of possible fraud. Once the software was up and running, it began reviewing the entire DMV photo database. Following this initial review, approximately 10,000 images were flagged as cases of possible fraud. DMV staff members reviewed these cases and were able to identify 1,300 cases of fraud (*i.e.*, two or more drivers' licenses under different

names, but with the same faces).¹ The software separately flagged both Appellants' records as cases involving fraud, and the Division notified both Appellants of its intent to suspend their current, non-fraudulent drivers' licenses for fraudulently obtaining a prior license under a false name.

A separate administrative hearing was held in each Appellant's case on May 13, 2010. At the hearings, each Appellant admitted to fraudulently obtaining a license, and the hearing officer suspended both Appellants' licenses for twelve months pursuant to 21 *Del. C.* § 2733(a)(5) and § 2751(a). Each Appellant separately appealed his suspension to this Court. The Court's Commissioner issued reports recommending that the Division's suspensions be affirmed. Both Appellants timely appealed the Commissioner's case-dispositive recommendation. The Court finds sufficient commonality of issues to justify the issuance of this joint opinion reversing the Commissioner's recommendation and the decision of the Division in each case.

Discussion

"The scope of review of an appeal from an administrative decision of the Division of Motor Vehicles is limited to correcting errors of law and determining whether substantial evidence of record exists to support the findings of fact and conclusions of law."² In the case at hand, while the Division of Motor Vehicles correctly found that the Appellants' conduct approximately eleven and eighteen years ago, respectively, violated 21 *Del. C.* § 2733(a)(5) and § 2751(a), it erred in suspending their drivers' license now, for the reasons stated below.

21 *Del. C.* § 2733(a)(5) provides in pertinent part that "[t]he Department may immediately suspend the license and driving privileges or both of any

¹ See Transcript of DMV *Deleon-Lopez* Hearing, Page 4.

² *Eskridge v. Voshell*, 593 A.2d 589, 1991 WL 78471 (Del. 1991).

person...whenever the Department has reason to believe that such person...[h]as violated § 2751(a) or (b) of this title.” 21 *Del. C.* § 2751(a) and (b) state, respectively, that a person may not use “[f]raud in obtaining...[a] driver’s license or identification card” or “in application for [a] license or identification card.” Violations of §§ 2751 (a) and (b) are class B misdemeanors,³ with an additional mandatory penalty of a maximum six month license suspension.⁴

A prosecution for a class B misdemeanor must be commenced within two years of the date the offense is committed.⁵ The two year limitations period may be extended, however, for crimes involving fraud. 11 *Del. C.* § 205(c) states that:

If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense in which the accused's acts include or constitute...fraud...may be commenced within 2 years after discovery of the offense has been made or should have been made in the exercise of ordinary diligence by an aggrieved party...who is not a party to the offense. *In no case shall this provision extend the period of limitation otherwise applicable by more than an additional 3 years beyond the period specified in subsection (b) of this section.*⁶

Thus, in a criminal prosecution for fraudulently obtaining a drivers’ license, regardless of the “date of discovery rule” for cases involving fraud, the State ultimately has a maximum of five years from the date on which the offense was committed to commence an action.⁷

Title 21 of the Delaware Code provides a similar limitations period, of a fashion, for administrative proceedings to suspend a license for a prior fraudulent obtainment.

Section 2733 (j) provides:

The Department *ordinarily* may not suspend a license based upon a driving record prior to 2 years before the date of the intended suspension. *If at the discretion of*

³ 21 *Del. C.* § 2751(r).

⁴ *Id.* It should be noted, curiously, that a *conviction* for the offense, in addition to the class b penalties, provides for a suspension period “to be set by the Court, *not to exceed 6 months;*” while a mere “good cause” “reason to believe” finding by the Division of the same offense may result in a suspension of up to one year.

⁵ 11 *Del. C.* § 205(b)(3).

⁶ 11 *Del. C.* § 205(c) (emphasis added).

⁷ The initial two years granted by § 205(b)(3) plus an additional three years granted by the final sentence of § 205(c).

the Secretary a longer record period should be considered, a suspension may be based upon such longer driving record period. (Emphasis added.)

The wording of 21 Del. C. § 2733(j) is problematic. “Ordinarily” is a very imprecise qualifier, and the statute contains no defined limit on the Secretary’s discretion to “look back” more than two years for reasons to suspend a license.

In any event, the statute clearly requires the Secretary of the Department of Transportation to utilize his discretion to authorize the Division of Motor Vehicles to take action against a person’s drivers’ license based upon information contained in his record that is more than two years old. In the instant cases, the Division offered no evidence in the administrative records below that the Secretary specifically authorized “looking back” more than two years into either of Appellants’ driving records, or even that the Secretary generally authorized suspension actions based on facial recognition software discoveries of fraud more than two years old. Without any specific evidence in the record of such exercise of discretion by the Secretary, the Court will not infer such an exercise from the mere institution of a suspension action by the Division. The Division hearing officer therefore erred in suspending the Appellants’ licenses without evidence sufficient to find that the Secretary authorized consideration of a record of more than two years.

Even if the records below had established the Secretary’s exercise of discretion, the Court would have considered whether the Secretary’s discretion to bring actions for suspension relying on incidents of fraud in driving records older than two years was appropriate. As the Delaware Supreme Court has stated, “It is the well recognized duty of a court to construe statutes of limitation so as to establish just and reasonable guidelines for different classes of cases in light of the general policy of repose.”⁸

⁸ *Ewing v. Beck*, 520 A.2d 653, 662 (Del. 1987).

As outlined above, fraudulent obtainment of a license is a criminal offense, for which a civil penalty also may be imposed. Both a criminal prosecution and a civil proceeding may result in license revocations. As a crime, it is subject to a two year limitations period, extendible to a maximum of five years from the offense date if the fraud was not discoverable at the time. As a civil offense, it is subject “ordinarily” to the same two year limitations period, extendible “at the discretion of the Secretary,” with no maximum time expressed.

If the Court were to interpret § 2733(j) to give the Secretary *carte blanche* discretion in extending, or even waiving, the limitations period on instituting suspension actions for fraudulent obtainment, no matter how long ago the fraud occurred, the statute could be deemed unconstitutionally vague and ambiguous in restricting the State’s use of its power against its citizens. In viewing the intent of the General Assembly expressed in sections 2733(j) and 2751 of Title 21, and section 205(c) of Title 11, the Court concludes that, in enacting § 2733(j), the General Assembly did not intend to give the Secretary unfettered discretion to extend the limitations period for civil license suspensions for fraudulent obtainment beyond the maximum criminal limitations period for the same offense.

The Court holds that, under the circumstances presented by the separate and specific facts of these cases, the Secretary’s exercise of discretion to consider an act of fraud in obtaining a license that occurred more than five years prior as a basis for the suspension of a current, non-fraudulent license would have violated the intent of section 2733 (j).

Appellant Deleon-Lopez fraudulently obtained a license under the assumed name of Eduardo Vicente in October of 1998. He subsequently became a legal permanent resident of this country in May, 2001, and obtained a valid Delaware driver’s license in

his true name on May 31, 2001. In March, 2010, more than eleven years after the fraud, and nearly nine years after Deleon-Lopez obtained a non-fraudulent license, the Division of Motor Vehicles suspended his non-fraudulent license.

Appellant Perez fraudulently obtained a Delaware driver's license under the assumed name of Isidro Castillo in 1992. On May 19, 1997, he obtained a valid driver's license in his true name. In March, 2010, nearly 18 years after the initial fraud, and almost 13 years after Perez obtained a non-fraudulent license, the Division suspended his non-fraudulent license.

Suspension of a license for an incident of fraud that occurred more than eleven years ago is clearly beyond the five-year period afforded the State to commence a criminal action for the same offense. As the Superior Court stated regarding a DUI revocation decision that occurred nearly five years after the offense, "To revoke [the Appellant's] license now misses the whole point of the statute which is a timely loss of driving privileges as a sanction for bad conduct."⁹ Appellant Deleon-Lopez has since become a legal resident of this country and obtained a valid Delaware license. He "has gotten on with his life and to now impose a one-year revocation is unconscionable."¹⁰

Appellant Perez, however, presents a different record. Although he likewise eventually obtained a non-fraudulent license under his own name, the record clearly establishes Perez also continued to renew his fraudulent license under the name of Castillo, most recently on December 5, 2006, less than five years before the Division's commencement of revocation process. Thus, had the record below contained evidence of the Secretary's authorization to "look back" more than two years, Perez' revocation would have been affirmed.

⁹ *Reynolds v. Shahan*, 2009 WL 2219953 (Del. Super. Ct. 2009).

¹⁰ *Id.*

Conclusion

The Division may suspend a person's drivers' license when it has "reason to believe" the person violated 21 *Del. C.* § 2751 (a) or (b). A person cannot be prosecuted for violating that law more than five years after the date of the offense. The statute that empowers the Division to thus suspend a license provides that it "ordinarily" may not look back at a driver's record more than two years for grounds to suspend a license, unless the Secretary of the Department of Transportation in his discretion decides that a longer period "should be considered." In the present cases, the Division revoked the licenses for acts that occurred more than eleven years ago. There is no evidence in the records that the Secretary affirmatively exercised his discretion to authorize consideration of such old information for revocation purposes. Even if there were evidence in the records of such discretionary authorization, in the case of Appellant Deleon-Lopez, to look back more than the five year maximum "date of discovery" criminal limitations period for the same offense would exceed the authority granted by 21 *Del. C.* § 2733 (j). Therefore, the Commissioner's recommendations are **REJECTED**. The decision of the Division of Motor Vehicles is **REVERSED** as to each Appellant.

IT IS SO ORDERED this ____ day of January, 2012.

Kenneth S. Clark, Jr., Judge